STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

North Shore Gas Company and	**:**	
The Peoples Gas Light and Coke Company	**:**	
	:	**10-0090**
Petition pursuant to Section 19-140 of the	**:**	
Public Utilities Act to Submit an On-Bill	**:**	
Financing Program.	**:**	

PROPOSED ORDER

April 16, 2010

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By the Commission:

On February 2, 2010, North Shore Gas Company ("North Shore") and The Peoples Gas Light and Coke Company ("Peoples Gas") (together "the "Utilities" or "NS/PGL") filed a Petition, pursuant to Section 19-140 of the Public Utilities Act (the "Act") (220 ILCS 5/19-140), requesting that the Illinois Commerce Commission ("Commission") issue an order on or before June 2, 2010 approving the Utilities' On-Bill Financing Program ("OBF Program" or "Program"). The Utilities also request that the Commission approve Rider OBF - On-Bill Financing ("Rider OBF"), which is required to implement the Program.

I. Background

On July 10, 2009, the Governor signed Senate Bill 1918 into law creating Public Act 96-0033 ("SB 1918"). SB 1918 added to the Act, among other additions, Sections 16-111.7 (the "Electric OBF Law") and 19-140 (the "Gas OBF Law"), requiring electric and gas utilities, respectively, serving more than 100,000 customers on January 1, 2009, to create programs that "will allow utility customers to purchase cost-effective energy efficiency measures with no required initial upfront payment, and to pay the cost of those products and services over time on their utility bill." 220 ILCS 5/16-111.7(a); 220 ILCS 5/19-140(a).

In compliance with Subsection (b-5) of the Electric OBF Law and the Gas OBF Law, six workshops were convened between August 4, 2009 and December 4, 2009. During the workshops, participants discussed issues related to the OBF program, as suggested by Subsection (b-5), including "program design, eligible energy efficiency measures, qualifications, financing, sample documents such as request for proposals, contracts, and agreements, dispute resolution, pre-installment and post installment verification, and evaluation." 220 ILCS 5/16-111.7(b-5); 220 ILCS 19/140(b-5).

The statute requires each utility subject to its provisions to submit a proposed OBF program no later than 60 days after the completion of workshops mandated by Subsection (b-5) of Sections 16-111.7 and 19-140 of the Act. 220 ILCS 5/16-111.7(b-5); 220 ILCS 5/19-140 (b-5). On February 2, 2010, NS/PGL filed their Petition, municipalities lists, the Direct Testimony of Vincent Gaeto, Director of Meter to Cash,

the Program Design Document ("PDD") and proposed Rider OBF (collectively, these filings are sometimes herein referred to as the "Proposal").

The petition of Northern Illinois Gas Company established Docket 10-0096; the petition of AmerenCILCO/ AmerenCIPS/AmerenIP established Docket 10-0095; and the petition of Commonwealth Edison Company established Docket 10-0091.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, a status hearing was held in this matter before a duly authorized Administrative Law Judge ("ALJ") on February 18, 2010 at the offices of the Commission in Chicago, Illinois. The ALJ granted the Petitions to Intervene filed by the following parties: The Citizens Utility Board ("CUB"), the People of the State of Illinois ("AG") and the Illinois Competitive Energy Association ("ICEA"). Counsel for the City of Chicago ("City") filed an appearance. At the status hearing, the parties agreed to a schedule for a paper hearing. No other parties objected to the subsequent ALJ ruling on February 18, 2010, which identified the schedule and provided an opportunity for parties to object to it.

On March 2, 2010, Staff, the AG and CUB filed Initial Comments. On March 4, 2010, the AG filed Revised Initial Comments. On March 12, 2010, Staff, the AG and CUB filed Reply Comments. The AG filed Revised Reply Comments on March 18, 2010. The Utilities filed Reply Comments on March 22, 2010.

This order considers the Petition and the various attachments thereto as well as the verified initial and reply comments and revisions filed by the Company, Staff, City and Intervenors.

II. Applicable Law

The Utilities seek approval of the Proposal, pursuant to the Gas OBF Law, Section 19-140, which provides that:

> (a) The Illinois General Assembly finds that Illinois homes and businesses have the potential to save energy through conservation and cost−effective energy efficiency measures. Programs created pursuant to this Section will allow utility customers to purchase cost−effective energy efficiency measures with no required initial upfront payment, and to pay the cost of those products and services over time on their utility bill.
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> (b) Notwithstanding any other provision of this Act, a gas utility serving more than 100,000 customers on January 1, 2009 shall offer a Commission−approved on−bill financing program ("program") that allows its retail customers who own a residential single family home, duplex, or other residential building with 4 or less units, or condominium at which the gas service is being provided (i) to borrow funds from a third party lender in order to purchase gas energy efficiency measures approved under the program for installation in such home or condominium without any required upfront payment and (ii) to pay back such funds over time through the gas utility's bill. Based upon the process described in subsection (b−5) of this Section, small commercial retail customers, as

that term is defined in Section 19−105 of this Act, who own the premises at which gas service is being provided may be included in such program. After receiving a request from a gas utility for approval of a proposed program and tariffs pursuant to this Section, the Commission shall render its decision within 120 days. If no decision is rendered within 120 days, then the request shall be deemed to be approved.

(b−5) Within 30 days after the effective date of this amendatory Act of the 96th General Assembly, the Commission shall convene a workshop process during which interested participants may discuss issues related to the program, including program design, eligible gas energy efficiency measures, vendor qualifications, and a methodology for ensuring ongoing compliance with such qualifications, financing, sample documents such as request for proposals, contracts and agreements, dispute resolution, pre−installment and post−installment verification, and evaluation. The workshop process shall be completed within 150 days after the effective date of this amendatory Act of the 96th General Assembly.

(c) Not later than 60 days following completion of the workshop process described in subsection (b−5) of this Section, each gas utility subject to subsection (b) of this Section shall submit a proposed program to the Commission that contains the following components:

(1) A list of recommended gas energy efficiency measures that will be eligible for on−bill financing. An eligible gas energy efficiency measure ("measure") shall be defined by the following:

(A) The measure would be applied to or replace gas energy−using equipment; and

(B) Application of the measure to equipment and systems will have estimated gas savings (determined by rates in effect at the time of purchase), that are sufficient to cover the costs of implementing the measures, including finance charges and any program fees not recovered pursuant to subsection (f) of this Section. To assist the gas utility in identifying or approving measures, the utility may consult with the Department of Commerce and Economic Opportunity, as well as with retailers, technicians and installers of gas energy efficiency measures and energy auditors (collectively "vendors").

(2) The gas utility shall issue a request for proposals ("RFP") to lenders for purposes of providing financing to participants to pay for approved measures. The RFP criteria shall include, but not be limited to, the interest rate, origination fees, and credit terms. The utility shall select the winning bidders based on its evaluation of these criteria, with a preference for those bids containing the rates, fees, and terms most favorable to participants.

(3) The utility shall work with the lenders selected pursuant to the RFP process, and with vendors, to establish the terms and processes pursuant to which a participant can purchase eligible gas energy efficiency measures using the financing obtained from the lender. The vendor shall explain and offer the approved financing packaging to those customers identified in subsection (b) of this Section and shall assist customers in applying for financing. As part of such process, vendors shall also provide to participants information about any other incentives that may be available for the measures.

(4) The lender shall conduct credit checks or undertake other appropriate measures to limit credit risk, and shall review and approve or deny financing applications submitted by customers identified in subsection (b) of this Section. Following the lender's approval of financing and the participant's purchase of the measure or measures, the lender shall forward payment information to the gas utility, and the utility shall add as a separate line item on the participant's utility bill a charge showing the amount due under the program each month.

(5) A loan issued to a participant pursuant to the program shall be the sole responsibility of the participant, and any dispute that may arise concerning the loan's terms, conditions, or charges shall be resolved between the participant and lender. Upon transfer of the property title for the premises at which the participant receives gas service from the utility or the participant's request to terminate service at such premises, the participant shall pay in full its gas utility bill, including all amounts due under the program, provided that this obligation may be modified as provided in subsection (g) of this Section. Amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial gas service.

(6) The gas utility shall remit payment in full to the lender each month on behalf of the participant. In the event a participant defaults on payment of its gas utility bill, the gas utility shall continue to remit all payments due under the program to the lender, and the utility shall be entitled to recover all costs related to a participant's nonpayment through the automatic adjustment clause tariff established pursuant to Section 19−145 of this Act. In addition, the gas utility shall retain a security interest in the measure or measures purchased under the program, and the utility retains its right to disconnect a participant that defaults on the payment of its utility bill.

(7) The total outstanding amount financed under the program shall not exceed $2.5 million for a gas utility or gas utilities under a single holding company, provided that the gas utility or gas utilities may petition the Commission for an increase in such amount.

(d) A program approved by the Commission shall also include the following criteria and guidelines for such program:

(1) guidelines for financing of measures installed under a program, including, but not limited to, RFP criteria and limits on both individual loan amounts and the duration of the loans;

(2) criteria and standards for identifying and approving measures;

(3) qualifications of vendors that will market or install measures, as well as a methodology for ensuring ongoing compliance with such qualifications;

(4) sample contracts and agreements necessary to implement the measures and program; and

(5) the types of data and information that utilities and vendors participating in the program shall collect for purposes of preparing the reports required under subsection (g) of this Section.

(e) The proposed program submitted by each gas utility shall be consistent with the provisions of this Section that define operational, financial, and billing arrangements between and among program participants, vendors, lenders, and the gas utility.

(f) A gas utility shall recover all of the prudently incurred costs of offering a program approved by the Commission pursuant to this Section, including, but not limited to, all start‑up and administrative costs and the costs for program evaluation. All prudently incurred costs under this Section shall be recovered from the residential and small commercial retail customer classes eligible to participate in the program through the automatic adjustment clause tariff established pursuant to Section 8‑104 of this Act.

(g) An independent evaluation of a program shall be conducted after 3 years of the program's operation. The gas utility shall retain an independent evaluator who shall evaluate the effects of the measures installed under the program and the overall operation of the program, including, but not limited to, customer eligibility criteria and whether the payment obligation for permanent gas energy efficiency measures that will continue to provide benefits of energy savings should attach to the meter location. As part of the evaluation process, the evaluator shall also solicit feedback from participants and interested stakeholders. The evaluator shall issue a report to the Commission on its findings no later than 4 years after the date on which the program commenced, and the Commission shall issue a report to the Governor and General Assembly including a summary of the information described in this Section as well as its recommendations as to whether the program should be discontinued, continued with modification or modifications or continued without modification, provided that any recommended modifications shall only apply prospectively and to measures not yet installed or financed.

> (h) A gas utility offering a Commission−approved program pursuant to this Section shall not be required to comply with any other statute, order, rule, or regulation of this State that may relate to the offering of such program, provided that nothing in this Section is intended to limit the gas utility's obligation to comply with this Act and the Commission's orders, rules, and regulations, including Part 280 of Title 83 of the Illinois Administrative Code.
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> (i) The source of a utility customer's gas supply shall not disqualify a customer from participation in the utility's on−bill financing program. Customers of alternative gas suppliers may participate in the program under the same terms and conditions applicable to the utility's supply customers.

220 ILCS 5/19−145.

III. NS/PGL's Proposed OBF Program

A. Overview

NS/PGL witness Gaeto testifies that Section 19-140 requires certain Illinois gas utilities to submit to the Commission a proposed OBF Program. Specifically, the section applies to gas utilities serving more than 100,000 customers on January 1, 2009. He states that both North Shore and Peoples Gas meet this criterion. They are jointly submitting their proposal and each company is proposing Rider OBF in its Schedule of Rates for Gas Service that specifies the terms and conditions applicable to participating customers, vendors and lenders. Gaeto Direct Test. at 3.

Mr. Gaeto cites Section 19-140(c)(7), which provides that utilities under a single holding company may be subject to the same cap on the total amount financed under the Program. He opines that this provision applies because North Shore and Peoples Gas are each wholly-owned subsidiaries of Peoples Energy Corporation, which in turn, is a wholly-owned subsidiary of Integrys Energy Group, Inc.

The Utilities' proposed OBF Program, Mr. Gaeto testifies, is designed to allow utility customers to borrow funds from a third party lender in order to purchase equipment that qualifies as energy efficiency measures approved under the Program with no required initial upfront payment, and to pay the cost of those measures and services over time on their utility bill. Gaeto Direct Test. at 5. Mr. Gaeto states that the Utilities intend to include water heaters, boilers and furnaces in the eligibility evaluation process for the OBF Plan, which will be finalized prior to the execution of the Program. He notes that none of the proposed measures are for retrofits of existing systems, as allowed under subsection (c)(1)(A).

B. Identification of Eligible Participants

According to the PDD, the Utilities' Program targets the residential sector: single family and multi-family up to four units, including duplexes and condominiums where service is being provided. Multi-family housing with greater than 4 units is not eligible. Customer/borrowers must be property owners; renters are not eligible. Customers of

alternative retail suppliers may participate in the Program under the same terms and conditions applicable to the Utilities' supply customers. PDD at 1.

C. Details of NS/PGL's OBF Program

1. Recommended Eligible Energy Efficiency Measure(s)

Subsection (c)(1) of the Act requires the Utilities to submit an OBF program that includes a list of recommended energy efficiency measures. Subsection (d)(2) requires that the program approved by the Commission contain criteria and standards for identifying and approving energy efficiency measures. NS/PGL witness Gaeto testifies that estimated gas savings will be determined based on reputable published data or information, *e.g.*, US EPA Energy Star®. The energy efficiency ("EE") measures financed by the Program will then utilize the gas savings estimates to ensure that the energy cost savings are greater than, or equal to, the customer's costs of implementing the measures, including finance charges and taxes. Energy cost savings will be calculated over the useful life of the EE Measure. Gaeto Direct Test. at 6.

Mr. Gaeto states that the eligibility criterion is key to the choice of measures to be financed by the Program. Per Section 19-140, EE Measures financed by the Program must have energy cost savings greater than or equal to the customer's costs of implementing the measures, including finance charges. EE Measures meeting this standard are eligible measures under the Program. Consistent with this definition, the Utilities will use a formula described in detail in Section 2.1 of the PDD to determine eligibility. In particular, he notes that Section 2.1(A) describes three components of the "energy cost savings" determination and Section 2.1(B) outlines the steps for calculating the "costs of implementing the measures. Gaeto Direct Test. at 6.

According to Mr. Gaeto, the eligibility calculation methodology uses a useful life savings ("ULS") analysis. The Utilities expect the maximum loan term for residential customers to be 10 years, reflecting the longest risk horizon feasible to obtain from financial institutions. Using the ULS methodology, estimated energy cost savings do not have to exceed loan payments during the loan term. Rather, cumulative estimated energy cost savings must exceed the customer's net cost for the EE Measures, with finance charges, over the useful life of the measure. Gaeto Direct Test. at 6-7.

The PDD states that the Utility will be responsible for confirming that EE measures meet the eligible measures criterion and will have the vendors apply this methodology in operations. The Utility will publish its list of approved measures to be supported by the Program prior to Program operations start up and may revise this list as Program operations proceed. The Utility intends to include water heaters, boilers, and furnaces in the eligibility evaluation process for the program. Also, due to the prescriptive manner in which eligible measures are calculated, expanding the list of recommended measures going forward will require a recalculation reflecting future utility rates and FI interest rates and term, and/or the removal of certain customer fees or redefinition of the customer cost.

2. Request for Proposals Process

Subsection (c)(2) of the Act directs the Utilities to issue a request for proposal ("RFP") to lenders. Mr. Gaeto explains that the Utilities will issue a RFP to procure a financial institution ("FI") to serve as lender, provide financing to customers and serve as partner in several roles to implement the Program. To meet this requirement, the Utilities are cooperating with the other utilities subject to either Section 16-111.7 or Section 19-140 of the Act to conduct a joint FI RFP process. The Illinois Energy Association ("IEA"), of which all the utilities are members, is facilitating this cooperation and will issue the FI RFP and coordinate the FI RFP process on behalf of all the utilities. Gaeto Direct Test. at 8.

As stated in the PDD, the Utilities, through the joint FI RFP process will procure a FI for the program to provide certain services including: a) assist in final financial structuring of the EE OBF financing program, in collaboration with the utilities; b) establish a lending facility of up to $12.5 million ($2.5 million per utility) and originate and provide EE loans to eligible customers, coordinating with EE vendors and the utilities; c) perform credit analysis of prospective borrowers and make loan credit decisions, apply underwriting guidelines as agreed upon with the Utilities and approved by the Commission as reasonable and prudent; d) notify the Utilities upon approval of a loan and disbursement of funds, using information exchange protocols to be established; e) administer the loans, with loan collections being performed by the Utilities; and f) provide monthly reports on lending activity and the loan portfolio.

According to the Utilities, other potential FI roles and services, to be determined through the RFP and negotiation process may include: marketing EE loans; assistance to the Utilities to develop and manage the vendor network; and on terms to be developed, provide additional lending over and above the amount proposed by the Utilities (subject to the Utilities' election and Commission approval).

The Utilities, coordinating through the IEA with the other utilities, will issue the FI RFP following Commission approval of the PDD. The FI RFP, which is attached to the PDD, also provides the program background; structure and terms of the proposed lending facility and loans, a prescribed format and content for FI proposals; and a description of the RFP process, including evaluation criteria and a timeline that will lead to selection of the FI and negotiation and execution of implementing agreements for the lending facility. Selection of a FI will be a subject for negotiation and the Utilities will negotiate an implementing lending facility agreement with the selected FI, but reserve the right to proceed to a second candidate if negotiations fail with the first.

Mr. Gaeto testifies that the IEA will constitute an Evaluation Committee with representation from all of the utilities, including Peoples Gas and North Shore. Proposals will be reviewed and evaluated by the Evaluation Committee members and consultants. The IEA will represent the Evaluation Committee and be the single point of contact for FIs in the evaluation and RFP process. IEA reserves the right to accept or reject any proposal that, in the sole opinion of IEA, does not fully reflect the objectives of the Program. IEA also reserves the right to select one or more FIs, based on territorial or other consideration, although a single FI partner is contemplated presently as the best approach. Gaeto Direct Test. at 8.

The evaluation criteria for selecting the FI is as follows: a) attractiveness of the proposed loan pricing; b) attractiveness and suitability of proposed loan tenors, prepayment options and other terms; c) thoroughness and ease of administration of loan origination procedures and coordination with Program partners, clarity and suitability of the loan underwriting criteria and ability to meet the program goals and having a plan for obtaining and perfecting Utility security interest; d) FI experience and qualifications in similar programs such as retail lending, home improvement lending, vendor finance and energy efficient lending; e) skills of the specific staff proposed; f) FI's marketing plan, geographic coverage, ability to serve State-wide and the ability to market to FI's existing customers; g) ability to provide additional services such as creation and management of a vendor network, application processing, and marketing activities; h) amount and reasonableness of proposed Program fees to be paid by the utilities; i) ability to expand lending and willingness to consider doing so on a limited recourse basis, will be considered (service is not presently requested); and j) financial strength and credit rating(s).

The PDD further states that, in order to attract interested FIs, the utilities intend that the Program be an attractive business activity for the FI and serve the FI's business goals and interests that may include: significant potential for expanded lending; opportunities to cross sell other services; positive public relations benefits due to its innovative features and environmental benefits; and potential for the FI to receive Community Reinvestment Act ("CRA") compliance credit. The utilities are interested in identifying potential FIs via market research, consultant contacts with FIs already active in EE finance markets, the State Treasurer's office network, and the utilities' existing FI and banking relationships. Contacts are being pooled amongst the utilities. Key interests of prospective FIs concern credit structure and transaction costs. The PDD notes that the credit structure of the Program is strong from the FI's perspective because the utility will ensure that all loans are repaid. Additionally, transaction costs can be managed through the design of the loan origination process which will include roles for vendors and have certain FI servicing costs paid by the utility directly as part of the program budget. The RFP asks proposing FIs to suggest ways to manage transaction costs with the view to creating streamlined efficient processes and keeping the loans affordable and attractively priced to borrowers.

3. Coordination among NS/PGL, Lender and Vendors to establish Terms and Processes

Subsection (c)(3) requires the Utilities to work with the lender and vendors to establish terms and processes for customer participation. Subsection (d)(3) requires that the program approved by the Commission include qualifications of vendors as well as a methodology for ensuring ongoing compliance with the qualifications. According to the PDD, the Utilities intend to hire a contractor to develop and oversee a vendor network. The Utilities' existing vendor network established for its existing EE/DSM programs may be drawn upon and augmented for this Program. An additional service from the FI partner may include assistance in the further development and management of the vendor network, using vendor qualification standards that are agreed upon with the Utilities.

In order to qualify to participate in the Program, vendors must provide qualifying information, to be assessed by the contractor performing this function which may be the FI. The PDD states that qualifying information may include but is not limited to types of EE services and measures offered, EE specifications and warranties on equipment offered, time in business, staffing, experience in the field of EE, customer references, financial data including bonding capacity and insurance, Better Business Bureau rating, licenses & certification, and acceptance of Program business terms and methods.

The PDD also states that vendors will have to take assignment of any Utility issued rebates to reduce the amount financed and ensure eligibility of the approved measures. According to Mr. Gaeto, the utilities participating in the joint FI RFP process intend that the FI will make disbursements of loan proceeds to the vendors upon completion of measure installation and acceptance by customers. Prompt payment to the vendors following completion of measure installation will be a priority in negotiating the lending facility with the FI. Gaeto Direct Test. at 9.

The Utilities' existing Trade Ally and Vendor network established for their Chicagoland Natural Gas Savings Program will be drawn upon and augmented for this program. The EE program currently under development for SB 1918 will further enhance the Trade Ally and Vendor network. Contractors that participate in the Chicagoland Natural Gas program are members of the Participating Energy Efficiency Contractor ("PEEC") Network operated by Midwest Energy Efficiency Association ("MEEA"). The PDD states that the PEEC Network serves as a resource for utilities and homeowners with a web-based listing of contractors trained by utilities to properly install and maintain high-efficiency equipment offered through their energy efficiency programs. In order to join the PEEC Network, contractors must successfully complete utility trainings, provide business license and proof of insurance, and agree to participate in post-installation, third party verification of their work, which is required for utilities to claim energy efficiency savings toward their program goals.

Furthermore, vendors will have an important role in marketing the energy efficient loan measures. According to the PDD, because the vendors' profitability depends on closing a sale, these organizations are motivated Program participants on the front line with the customers. Not only will vendors help customers choose measures, but trained vendors will explain available rebates, help capture federal tax credits, and complete the loan application forms.

An advertising campaign will be implemented which may include messages communicated using bill stuffers, point of sale brochures and public service announcements. Co-marketing between gas and electric utilities serving the same territories may be coordinated. In addition to the Utilities' vendor networks, the Utilities will consider using appropriate Illinois trade associations to market the Program. The Utilities will integrate the marketing of the Program with the marketing of its existing EE/DSM programs targeting the residential sector. The Utilities will anticipate when their $2.5 million total Program lending cap limit is approaching and will adjust their marketing program according to the remaining availability of lending capacity.

4. Lender Approval Process and Subsequent Billing and Payment Arrangements with NS/PGL and Participants

The PDD states that the EE loans will be made by the FI as a third party lender. The source of funds will be the Lender's own liquidity. The Utilities will seek to arrange a lending facility with loan tenors up to 10 years, loan payment schedule of level monthly payments of principal and interest, in arrears, and liberal prepayment options.

According to the PDD, loan underwriting guidelines will be jointly developed by the Utility and FI, subject to the approval of the Commission. The FI RFP requests FIs to propose underwriting guidelines that will be reasonable and prudent for credit risk management, easy to administer, and reflect the underlying support of the Utility. In loan origination, the FI will perform the credit analysis of prospective borrowers using the agreed underwriting guidelines. The FI will be asked to report on its credit decisions, applications, rejections and approval rates. Loan underwriting guidelines can also be modified during Program operations, as experience dictates. A main goal of the Program is to establish a preferential and easy-to-use EE lending program, which must be balanced with the need to manage credit risk.

To assure proper application of loan proceeds and timely payment to vendors, the Utilities propose that the FI make disbursements of loan proceeds directly to the Vendor following completion of the installation and acceptance of the installation by the borrower. Additionally, the loans will be for term finance only and will disburse following project completion and acceptance. Disputes between the vendor and the customer will be handled in the normal manner established by the vendors.

The PDD further states that the FI will report to the Utilities summary information on all loans originated during the applicable period. The Utilities will agree with the selected FI, through negotiations, on the information sharing protocols and formats. Also, the PDD states that the collection of loan payments will be done by the Utilities through a separate line item charge on participating customers' utility bills.

5. Participant Rights and Obligations

Mr. Gaeto testifies that, consistent with Section 19-140(c)(5), the Utilities will not be a party to the loan and, consequently, will not interfere with the contractual arrangement between the lender and the Program participant. To the extent the FI or a participant seeks information from the Utility in connection with a loan dispute and the Utility has the right or obligation to provide the requested information, the Utilities will do so, but will not otherwise be involved in a dispute between the lender and the participant. Gaeto Direct Test. at 9.

The PDD states that the customers' obligations to pay loan payments will be treated commensurate with the obligation to pay the utility bill. The Utility may terminate utility service in event of non-payment. Upon transfer of the property title for the premises at which the participant receives service from the Utility or the participant's request to terminate service at such premises, the participant shall pay in full all amounts due under the Program.

6. NS/PGL's Rights and Obligations

The PDD states that the Utilities will repay all loans to the FI, regardless of customer payment timing and performance. The Utilities expect the loan pricing offered by and agreed to with the FI to be commensurate with this arrangement and credit structure.

Pursuant to subsection (c)(6), Mr. Gaeto testifies that Peoples Gas and North Shore each filed for approval of a tariff (Rider UEA) under Section 19-145 of the Act and that approval of the tariffs is being considered in Dockets 09-0419/09-0420 (consol.). The Utilities may later file proposed changes to Rider UEA if necessary to expressly address non-payment under Section 19-140.

Also under subsection (c)(6) of the Act, the Utility shall retain a security interest in the equipment. According to Mr. Gaeto, the Utilities intend to work with the FI to address the security interest that the law grants. In the FI RFP, the Utilities request that the lender propose to take the agreed security filing action as part of its services. Costs associated with the security filing may be treated as Program costs, to be reimbursed to the lender by the Utilities.

7. Lending Limits

The PDD states that a lending facility of up to $12.5 million will be established with the selected FI, with $2.5 million for the Utility. The proposed availability period for lending under the facility is three years. The Utilities propose a minimum loan amount of $1,000 with a maximum estimated to be $15,000.

D. Program Cost Recovery

NS/PGL witness Gaeto notes that Section 19-140(f) allows the Utilities to recover prudently incurred costs through an automatic adjustment clause tariff established under Section 8-104 of the Act. He states, however, that Peoples Gas and North Shore have not yet filed that tariff. Section 8-104 pertains to EE programs that certain gas utilities must file by October 1, 2010. The Utilities expect to file the tariff when they file their plans. Gaeto Direct Test. at 12.

Further, Mr. Gaeto testifies that Program costs will include: incremental Utility staffing, Program development, marketing, vendor network development and management, evaluation and FI fees paid by the Utility, if any. Program costs may include some fees paid by the Utility to the FI to cover certain FI costs for its services, including loan program set up, loan origination and administering the Program. This approach will reduce costs to the participating customers. The FI RFP requests proposing FIs to suggest such a budget for Program costs that would be reimbursed by the Utility directly; these amounts will be determined through the FI procurement and negotiation process. Gaeto Direct Test. at 12.

According to Mr. Gaeto, the Utilities do not have estimates for these costs at this time. There are many unknown variables about the Program that will affect costs and the Utilities are currently unable to produce accurate costs estimates for the Program. Gaeto Direct Test. at 13.

E. Independent Evaluation Planning

Subsection (g) of the Act requires the Utilities to retain an independent evaluator to conduct an evaluation of the Program after three years. Evaluation will be conducted and data will be collected on both the financial and energy saving aspects of the Program operations in order to assess the effects of the measures installed under the Program and the overall operation of the Program. The monitoring and evaluation plan is integral to the Program design and plans will be established from Program start to collect key data necessary for the evaluation. Recommendations as to whether the Program should be discontinued, continued with modification(s), or continued without modification will be made.

Mr. Gaeto testifies that financial data will be collected by both the Utility and the FI. As part of its services, the FI will be responsible for collecting data regarding lending activity for which it is responsible, primarily during the origination of the loans. Gaeto Direct Test. at 12.

The PDD provides that the FI will collect key financial data including: number of applications; approvals; approval times; approval date to funding; rejections; reasons for rejections; number of booked loans; loan amounts and tenors; types of EE measures; total investment amount of EE measures; aging receivables; defaults and bad debts; service suspensions; recoveries; and actual final losses.

Qualitative analysis will be conducted on the Program experience of customers, vendors, and the FI, assessing the experience and satisfaction of each key stakeholder with the Program financing methods. Customer service matters include experience in the sales process, ease of use of the finance Program, marketing approach, technical or product problems, Vendor experience and problems and resolution of problems versus unresolved cases. Vendor experience includes ease of use of the finance Program, roles in Loan origination, and timeliness of disbursements. Recommendations for improvement will be considered and assessed, including assessments of underwriting guidelines. Recommendations will be considered and made regarding Program expansion both in scale and in additional customer sectors, including customers who are tenants. Recommendations on the Program's interaction and synergies with the Utilities' EE and DSM programs will also be considered and assessed.

Additionally, key energy saving data to be collected will include: the types and characteristics of measures replaced and the types and characteristics of measures installed.

Additionally a RFP will be issued to select an independent evaluator who will have the responsibility of completing the evaluation at the end of the Program year three. It is the Utilities' intent to contract for the OBF Program and the EE and DSM programs in the same RFP.

F. Proposed Tariff Changes

Mr. Gaeto attaches to his testimony proposed Rider OBF, which is a draft tariff for both Peoples Gas and North Shore. He states that it sets forth the terms and conditions applicable to customers, lenders and vendors who participate in the Program

and also describes the Utilities' rights and responsibilities. It identifies the customer classes eligible to participate in the Program and addresses the statutory requirements. He also notes that in addition to Rider OBF, the Utilities will need to revise the Table of Contents in their Schedule of Rates for Gas Service to show the new rider.

IV. Proposals Accepted by NS/PGL

The following issues are Staff or intervenor proposals that NS/PGL has accepted or requests for NS/PGL to clarify its position.

A. Determination of Eligible Measures

CUB/City note that the Utilities state that they will publish the final eligible measure(s) prior to the Program's start up. CUB/City point out that the RFP for the FI has not yet been completed, so it is premature to include or exclude any measures from the Program prior to possessing the information, such as the interest rate of the loan, that can only be determined once the FI has been selected. According to CUB/City, once the loan terms have been selected, all the utilities should provide the results of the formula testing, including all measures considered and the final list of OBF program measures. CUB/City recommend that the Commission order that a workshop be held once the FI has been selected and a final list of measures be proposed so that Staff and other stakeholders can review and understand the final OBF Program.

In response, the Utilities state that they do not oppose providing the final list of eligible measures to the Commission or making the list public. The Utilities, however, state that although they do not oppose workshops, they are uncertain what purpose workshops would serve with respect to that list.

Although not explicitly stated, the Utilities speak of a final list, implying that the exact measures that will be eligible has yet to be determined. The Commission finds it appropriate to re-examine which measures will be eligible after the FI has been selected and the loan terms are known. Also, Staff is directed to reconvene the workshops after the FI is selected in order for the Utilities to present the results of the RFP and provide an update on Program development. Once the final list of eligible measures is known, it should be filed with the Commission.

B. Lender RFP/Affiliated Interests

Staff does not object to the process and content the Utilities propose for the RFP component of the OBF program. Nevertheless, Staff has identified a potential issue: some financial institutions meet the definition of "affiliated interest" set forth in Section 7-101(2) of the Act. Consequently, Staff opines, if the winning bidder were an affiliated interest of one or more of the affected utilities, the affiliated utilities would have to file a petition seeking Commission approval under Section 7-101 to enter into a contract with the winning bidder. Such a petition, Staff notes, would inevitably cause a delay in the selected financial institution signing a contract with at least some, if not all the utilities.

In Staff's opinion, a Section 7-101 proceeding can be avoided in either of two ways: the utilities may (1) agree to exclude financial institutions that are "affiliated interests" from participating in the RFP; or (2) modify the RFP process such that it

meets all the criteria for the competitive bidding waiver for Commission approval of contracts with affiliated interest. See 83 Ill. Adm. Code 310.70.

CUB/City state that they are not clear what affiliated interests would meet Staff's definition and comment only to note the lack of clarity. CUB/City have no objection to any of Staff's proposals to avoid a conflict of interest and recommend that the Commission direct the RFP Evaluation Committee to consider this issue.

The Utilities agree with Staff that it is possible that an FI could be an "affiliated interest" and speculate that Section 7-101(2)(f) is the source of Staff's concern. Determining how to address Staff's proposals requires coordination with the other utilities participating in the FI RFP process and the IEA. Discussions on this topic have not yet occurred. NS/PGL agree to explore Staff's suggestions to determine, with the other utilities and the IEA, how best to proceed. Although they have not been able to ascertain how many FIs could be excluded if the utilities were to adopt Staff's proposal to exclude affiliates from bidding, NS/PGL caution that excluding FIs from the process may produce less competitive results.

Staff has raised a legitimate concern that some FIs that respond to the RFP may be affiliated interests of one or more of the utilities. The Utilities agree with Staff that it is possible that an FI could be an "affiliated interest". The Utilities note that determining how to address Staff's proposals requires coordination with the other utilities participating in the FI RFP process and the IEA. The Commission finds NS/PGL's proposal to explore Staff's suggestions with the other utilities and the IEA to be appropriate.

C. Cost Sharing Mechanism

In response to Staff, the Utilities state that there is a written cost sharing arrangement in place for the FI RFP process. This sharing applies only to the RFP process, after which each utility will enter into its own agreement with the FI.

D. Riders

Staff proposed minor language changes to the Utilities' proposed Rider OBF, which the Utilities accepted. With that change, Rider OBF is approved.

The Utilities expect to file their energy efficiency rider for recovery of the program costs under Section 8-104 on October 1, 2010. The Utilities have agreed to provide Staff a draft tariff for review by September 1, 2010.

E. Customer Education

Staff states that customers who take advantage of the proposed OBF program should be informed about how their participation may affect their bill when changes in utility service occur. In particular, customers will need to know how moving to another location both within and outside the utility's service territory will affect their bill. In addition, it is important that customers understand that their utility service may be subject to disconnection for non-payment of on-bill financing charges. Furthermore, customers should be informed of conditions under which the balance of the amount borrowed would become due. Finally, customers whose service has been disconnected

will need to know what options they may have to reconnect utility service. Accordingly, Staff recommends that the Company include, in its reply comments, a commitment to develop consumer information covering the above points and to provide a description of how the information will be communicated to customers.

CUB/City note that it is unclear from Staff's comments if they are intending to draft a type of "Universal Disclosure Statement" similar to what has been proposed with respect to electric retail competition or a general consumer education program. Either way, CUB/City support recommendations to provide customers participating in the OBF Program with information about their rights and responsibilities and look forward to providing customers with information about the program.

The AG supports Staff's recommendation as an important consumer protection issue. In addition, the AG believes that if the Utilities' Program applies a gross receipts tax, this information needs to be timely communicated as well.

The Utilities state that they do not oppose efforts to make customers aware of key rights and obligations associated with their choice to participate in the OBF Program. To the extent the Utilities participate in the efforts requested by the Staff, it is their position that the resulting costs are recoverable under Section 19-140(f).

Moreover, the Utilities state that they have strong incentives to inform customers of the ramifications of participating in the Program, notably the fact that a utility may disconnect a customer's service for non-payment of the Program loan and that moving or voluntarily discontinuing service triggers an obligation to pay the full amount of the loan. Ensuring that customers understand these aspects of the Program is important to minimize customer confusion and service discontinuance associated with the Program. The Utilities commit to formulating an education plan, including how they will disseminate this information to customers.

The Utilities add, however, that they anticipate that their role in customer education is limited. They do not expect to be the principal point of contact with customers determining whether to participate in the Program – they expect vendors and the FI will be the primary sources of information for customers. As part of the FI RFP and contracting with vendors, Petitioners expect to address customer education.

The Commission finds Staff's customer education concerns to be valid and directs the Company to work with Staff to develop the information that will be provided to customers. The costs of providing this information is a program cost recoverable through the utility's automatic adjustment clause tariff.

F. Program Administrator's Role

The Utilities intend to hire a separate contractor to develop and oversee a vendor network, though the Utilities note that the existing vendor network established for existing energy efficiency and demand response programs may be drawn upon and augmented for this program. CUB/City agree that the Utilities should use existing resources as much as possible which will take advantage of these vendors familiarity with the Utilities contracting and billing arrangements. Most importantly for the success of the OBF Program, vendors already familiar with energy efficiency protocols can be

reasonably relied upon to properly install and maintain the high efficiency equipment. CUB/City state that using existing contractor networks as much as possible will help to lower overall program costs and lessen the burden of the FI to double check the vendors' credentials. However, CUB/City, with the support of the AG, assert that before the Utilities' OBF Program is approved, the Commission should ask for and receive clarification on the role of any contractor hired to oversee the vendor network, along with information on the associated costs.

The Utilities clarify that the Program Administrator will provide services to NS/PGL in the administration of their OBF Program and their energy efficiency program required by Section 8-104 of the Act. NS/PGL lack the staffing and expertise to administer these programs without assistance, which are not their core business of providing gas utility sales and distribution services to retail customers. Further, the Utilities state that the Program Administrator will provide the requisite expertise to coordinate these programs and assist them in meeting their statutory obligations. The Utilities have not yet selected a Program Administrator and, therefore, associated costs are unavailable.

The Commission notes that CUB is not clear in what it is looking for, but we are satisfied with the Utilities' clarification.

G. Loan Amounts

CUB/City note that the Utilities provide two different minimum and maximum loan amounts. In Section 5.9 of the PDD, the Utilities reference a minimum of $1,000 and a maximum of $15,000. However, in Utilities Ex. 1.1 Annex B, the range is from $500 to $20,000. CUB/City recommend that there be a consistent loan cap among the utilities with residential only programs because a lower minimum loan would enable a larger number of customers to participate. To make it as easy as possible for the FI, and for program consistency, CUB/City recommend the same funding levels be used throughout the state: $500 as a minimum and $20,000 as a maximum.

The Utilities do not oppose CUB/City's proposal that loan amounts be consistent across all utilities with residential only programs - $500 minimum and $20,000 maximum. The Commission agrees that consistent loan amounts across all affected utilities is appropriate.

H. Acceptance

According to the AG, the Utilities propose that lender disputes will be resolved between participant or customer and the lender. However, there is no language to describe how disputes will be handled between the customer and the vendor. In particular, the AG notes that there is no language to describe what constitutes "acceptance by customers." The AG states that the Utilities must make it clear how the customer will demonstrate acceptance of the measure by the vendor and how this information will be communicated to the lender before making its disbursements. This information needs to be stated clearly in the PDD and the RFP.

CUB agrees with the AG that it is important to have a process in place so that a customer who is not happy with a contractor's work would have some leverage in

dealing with the contractor. CUB also recognizes that there would need to be checks in place to protect the contractor as well to ensure that they receive their money in a timely fashion from the lender.

In response to the AG's concern regarding what qualifies as customer acceptance, the Utilities state this process will be finalized with the FI. Petitioners do not anticipate a cumbersome process to trigger disbursement of loan proceeds. However, they assert that the process and criteria that will trigger disbursement need to be part of the contract with the FI.

The AG is not clear in stating what it is looking for, but in the Commission's view, the Utility's approach is reasonable and addresses the AG's and CUB/City's concerns.

I. Prepayment

The AG recommends that prior to the approval of the proposed program that the Commission require the Utilities to describe in the PDD that the customer may voluntarily pay off the loan early with no penalty and the RFP should specifically state the payoff plan proposed by the AG.

The Utilities agree that their agreement with the FI should address early loan payoff. The Utilities also do not oppose loan terms permitting early payoff with no penalty to the customer. The details of any such early loan payoff would need to be part of the FI agreement.

The Commission finds the Utilities' proposal to be reasonable.

J. Extension to Commercial Customers

The AG notes that initially the Utilities intend only to include residential customers in the Program, but the Utilities could add small commercial customers to the program at a later date. The AG and CUB/City recommend that the Commission make it clear in its Order that any Program or related costs that arise from the inclusion of small commercial customers will be assigned to that customer class and not residential customers.

The Utilities agree that Program costs associated with offering the Program to small commercial customers should be recovered from those customers. They state that they have no plans to offer the program to small commercial customers. They note that their tariffs do not include a distinct rate class solely for small commercial customers as defined in Section 19-105 of the Act.

The Commission finds this to be appropriate.

K. Data Collection

Staff, supported by CUB/City, notes that the Utilities propose the collection of key financial data and also a qualitative analysis of the program experience of customers, vendors and the lender. In addition, Staff recommends data be collected on the types and characteristics of both measures replaced and installed.

The Commission notes that the PDD includes a provision that data will be collected on the types and characteristics of measures replaced and installed. Thus, no issue exists.

V. Staff's Position

The Gas OBF Law provides eligibility criteria for utilities that are obligated to develop OBF programs under the law, as well as eligibility criteria for customers that may participate in established and Commission approved OBF programs. 220 ILCS 5/19-140(b). In particular, an affected gas utility must "serv[e] more than 100,000 customers on January 1, 2009." *Id*. Staff has reviewed these requirements and determined that NS/PGL has appropriately submitted its Proposal.

Because some of the statutory components of the OBF Program involve obligations of participating customers, lenders and vendors not currently chosen or identified, Staff is of the view that the Commission can expect compliance with these statutory obligations at the time the obligations arise and, therefore, only addresses those aspects of the OBF Program if and to the extent the program appears inconsistent with the statute.

A. Identification of Eligible Participants

Staff has determined that NS/PGL has identified those customers that are eligible for participation in its OBF program in accordance with the Gas OBF Law.

B. Details of the OBF Program

1. Eligible Energy Efficiency Measures - Loan Origination Fees

Staff reviewed the proposed list of measures in conjunction with its review of the cost effectiveness methodology that NS/PGL proposed to use to screen eligible measures. Staff notes that the Utilities' method does not include loan origination fees as a cost of implementing the measure because it is the position of the Utilities that these are program costs to be recovered through an automatic adjustment clause tariff established under 8-104 of the Act, rather than a cost of implementing the measure to be incurred by the customer. Staff, however, recommends that loan origination fees be paid by customers receiving the loans rather than collected from all customers through the automatic adjustment clause tariff. Accordingly, Staff recommends that the Utilities modify their eligibility screening method to include origination fees as a customer cost.

In support of this recommendation, Staff suggests that NS/PGL's methodology is inconsistent with subsection (c)(1)(B), which states that the estimated gas savings must be sufficient to cover the cost to implement the measure, including finance charges and any program fees not recovered pursuant to subsection (f). From Staff's perspective, loan origination fees are part of the loan costs and are not program fees. Staff notes that, while loan origination fees are often charged up front to all customers applying for certain types of loans, subsection (a) of Section 19-140 provides that customers are not required to make initial upfront payments. Staff views NS/PGL's proposal as addressing this issue by including the origination fee in the costs for recovery through the automatic adjustment clause tariff. Staff, however, states that subsection (f) speaks to start-up and administrative costs and should not be interpreted so broadly to include

loan costs of individual customers. Staff opines that NS/PGL's proposal creates a different problem in that it imposes the loan origination fees of individual customers participating in the OBF program onto all ratepayers.

According to Staff, if origination fees are included as incremental costs recoverable through a Section 8-104 automatic adjustment clause tariff, the cost portion of the cost effectiveness analysis is lowered, potentially making more measures eligible. However, it does so by spreading the costs of loan origination fees across all customers within the eligible service classes instead of having the customer receiving the loan pay the cost of processing credit checks and other paper work in the loan application process. Staff explains that, because loan origination fees are specific to each individual loan and the customer receiving the loan receives the benefits from the avoided costs associated with the measure, it believes that origination fees should be included in the customer cost of implementing the loan rather than be socialized across all customers and collected through the adjustment clause tariff.

Staff recommends that the payment of origination fees by the customer receiving the loan be addressed by either having the lender incorporate its processing costs in the interest rate to successful borrowers or having the lender include the origination fee in the loan amount to be repaid and financed. Staff asserts that either approach would avoid an upfront fee that the OBF Law forbids, while making the borrower responsible for this cost.

2. Vendors

Staff has reviewed the Utilities' testimony and Proposal related to vendors and vendor qualifications. NS/PGL has addressed the relevant issues and Staff does not object to the Utilities' plan to develop the vendor network and to develop the vendor qualifications and agreements.

C. Filing Requirements

1. Sample Loan Documents

The Utilities' Proposal anticipates that lenders will provide standard loan documents as part of the RFP. Staff believes this satisfies the requirement for sample contracts and agreements necessary to implement the measures and program in Subsection (d)(4).

D. Tariffs

1. Cost Recovery

Staff recommends that the Commission approve the Utilities' cost recovery plans for the OBF Program costs, with the exception that loan origination fees should be excluded. Further, Staff has no objection to the accounting procedures related to the cost recovery provisions and program costs of the OBF Program as described by the Utilities, with the exception Staff recommends that the Utilities present and confirm in reply comments that an agreed cost sharing mechanism is in place with the other utilities implementing OBF Programs for the shared financial institution RFP process costs.

In accordance with Section 19-140(f), the Utilities propose to recover certain prudently incurred costs under the automatic adjustment clause tariff to be established under Section 8-104. The Utilities expect to file that tariff on October 1, 2010. Staff recommends that the Utilities provide drafts of the Section 8-104 tariffs for Staff's review no later than September 1, 2010. Staff states that the Utilities agreed with Staff's recommendation in discovery.

Further, Staff notes that the Utilities agree to maintain separate accounting records related to the incremental costs associated with the OBF Program versus other costs recovered pursuant to Section 8-104 of the Act. Also, the Utilities assert that each program required by Senate Bill 1918 is being recorded in a separate project number, and the recoverable costs are being recorded in separate regulatory assets.

According to Staff, the costs that the Utilities plan to recover pursuant to Section 19-140(f) are initially recorded in a separate project and will then be moved to a regulatory asset. The Utilities plan to amortize the costs over three years, which they state is an appropriate time period because Section 19-140(g) requires an evaluation report by an independent evaluator after three years of program operations. The Utilities have jointly incurred approximately $26,000 in costs eligible for recovery from July 10, 2009 through January 31, 2010. The costs will be allocated to Peoples Gas/NS based on the average number of customers for each company, resulting in an 85/15 allocation, respectively.

In a response to a Staff Data Request, the Utilities provided a current estimate for the start up, program administrative and program evaluation costs of the OBF Program. The Utilities state that, regarding the costs for the consultant on the financial institution RFP process, the Utilities will share costs with the other utilities participating in the OBF Program, but provided no documentation of any agreement with the other utilities. The Utilities further stated that they are amenable to sharing costs of the OBF Program such as program evaluation with other utilities, but at this time there is no agreement or arrangement in place for such sharing. Staff recommends that the Utilities present and confirm in reply comments that an agreed cost sharing mechanism is in place with the other utilities implementing OBF Programs for the shared RFP costs.

2. Company Filings

Staff reviewed the Utilities' proposed Rider 31 – On-Bill Financing Program tariff ("Rider OBF") for natural gas service. Rider OBF "will allow utility customers to purchase cost-effective energy efficiency measures with no required initial upfront payment and to pay the cost of those products and services over time on their utility bill." 220 ILCS 5/19-140(b).

Staff opines that, pursuant to subsection 19-140(b), the Utilities have appropriately included the customer criteria in Rider OBF. The Utilities propose to offer the OBF Program to Service Classification 1 – Small Residential Service and Service Classification 2 – General Service which would include small commercial customers who consume an average of 41,000 therms per month or less. Additionally, Rider OBF, Section D, item 2 allows transportation customers to also participate in the OBF Program.

According to Staff, the Utilities have also satisfied subsection 19-140(c) which requires the Utilities to set out the loan payment as a separate line item on the bill. Also, the Utilities propose language in Rider OBF that permits a participant's service to be disconnected in the event of nonpayment of Program charges that appear on the bill. Staff states that the proposed tariff language is in accordance with subsection 19-140(6) that states the utility retains its right to disconnect a participant that defaults on the payment of its utility bill.

Staff recommends the following change to the first sentence in Rider OBF Section A – Applicability, on page 1 of 4:

> The terms and conditions of this rider shall apply to customers that apply for loans offered by a Third Party Lender to facilitate Eligible Customers' purchase and installation of Efficiency Measures from and by Vendors . . .

If this suggested change is implemented, then Staff recommends approval of Rider OBF in this docket.

E. Staff Reply to the AG

1. Budget Cap

With respect to the AG's position that a cap should be imposed on administrative program expenses, Staff states that the OBF Law does not establish a cap on expenses and, therefore, the Commission does not have the authority to impose a cap. Staff suggests that the Commission may ask the utilities to cap their budgets, but the Commission may not impose one.

Moreover, from Staff's perspective, even if a proposed budget were included in the OBF program plan, it would only be informational. Staff notes that subsection (f) clearly limits recoverable expenses to prudent expenses and that the OBF Law does not require submission of a proposed budget. Further, the prudency of expenses cannot be determined based on a hypothetical budget, but rather, the costs must be examined based on the existing market at the time the costs are incurred. The Commission should determine whether actual expenditures are reasonable and prudent in a reconciliation proceeding, after detailed review of actual expenditures, costs, and expenses with the benefit of adequate discovery. Staff urges the Commission to clarify in its Order that any approval of the OBF Program in this docket shall not be deemed an approval of associated budgeted amount.

2. Security Interests

Staff notes the AG's position that the Commission should disallow any costs associated with obtaining a security interest. Staff agrees generally with the Utilities that the costs may well outweigh the benefits of perfecting and enforcing a security instrument in connection with the financing of the measures. In the event, however, that a security interest is taken in an energy efficiency measure, Staff believes that these costs should be recovered from the customer and not recovered from ratepayers generally.

Staff quotes Section (c)(6) of the Electric OBF Law that states that the utility shall retain a security interest, but Staff suggests that it is the FI that would retain the security interest in the energy efficiency measure and not the Utilities. Staff points to Illinois law to support its position that only the entity that lends the funds and holds the note may hold the security interest. Staff also suggests that it is the lender that will fund the loan and resolve defaults and other disputes. Staff opines that in order to satisfy the statute, the lender may permit the Utility to retain control over the security interest.

Staff recommends that the right to perfect and enforce any security interest be exercised only in instances where the financing market generally would similarly perfect and enforce such a security interest for loans of this size and type. Otherwise, Staff argues, the participating customer (or ratepayers generally) may be paying for security not deemed necessary or worth it by lenders in connection with similar loans. Staff also recommends that FI bidders should identify these costs.

VI. CUB/City Position

A. Initial Comments

1. Furnace Verification

CUB/City interpret the meaning of "applied to" more broadly than the Utilities, who limit the phrase strictly to retrofitting existing systems. Utilities Ex. 1.0 at 5. According to CUB/City, "applied to" does not simply limit the Utilities to retrofits, but also can include services related to the installation of an eligible energy efficiency measure. CUB/City state that during the workshops, participants learned that many furnaces which are installed do not achieve their labeled efficiency because duct work in the home is not conducive to enabling the furnace to operate at the ideal efficiency. According to CUB/City, given the importance of proper duct alignment to achieve actual energy savings, CUB/City believe that installation of furnaces must include an examination and, where necessary, an improvement of the associated duct work. Additionally, consumers can improve their duct work if their current ducts are not sufficient to enable their furnace to operate at maximum efficiency. For this reason, CUB/City propose that a sampling of 1/3 of all furnaces installed have both pre- and post-verification in order to ensure that the consumer is realizing the full efficiency of their investment.

2. FI Selection

The Utilities are cooperating with other utilities to conduct a joint RFP to find the FI that will serve as lender, provide financing to customers and serve as partner in several roles to implement the Program. The IEA of which all utilities are members, is facilitating this cooperation and will issue the FI RFP and coordinate the FI RFP on behalf of the utilities. The IEA will constitute an evaluation committee with representation from all participating utilities and the proposals will be reviewed and evaluated by committee members and their consultants. The IEA reserves the right to accept or reject proposals and the right to select one or more FIs based on territorial or other considerations.

CUB/City are concerned that the Utilities' proposed process provides the IEA with veto authority over final FI selection. CUB/City argue that it is not clear what additional value the IEA brings to the process aside from having all four utilities participating in the RFP as members. Additionally, according to CUB/City it is not clear how the Commission or other stakeholders will be informed of the deliberations or actions. CUB/City propose that the Commission name CUB, the AG and Staff as members of the RFP Evaluation Committee. Additionally, CUB/City would also like to see that the RFP evaluation matrix be revised to place more emphasis on, "Loan Pricing: interest rate pricing and fees" because having a low interest rate is possibly the most critical component of the RFP for consumers. CUB argues that points could be taken away from "Loan marketing & geographic coverage" and "additional services" and given to "Loan Pricing" in order to make that criteria more heavily weighted in comparison to the others.

3. Underwriting Criteria

Although underwriting criteria will finalized with the selected FI, CUB/City are concerned that the use of credit checks to screen customers for eligibility is a heavy-handed measure that will add unnecessary costs to the program. CUB/City argue that this is the case because the Utilities are in possession of bill payment history for all of their customers, which provides a rich source of information about a consumer. According to CUB/City, bill payment history should be the principal measure of a person's worthiness to obtain a loan under the Program. According to CUB/City, as discussed at the workshops, individuals with poor credit scores still often pay their utility bills. CUB/City do not want to see people that could benefit from energy efficiency measures being denied access to the Program because they do not have an ideal credit score. While CUB/City does not want to see imprudent loans, they believe that the Commission should rule that the use of utility bill payment history is a prudent way to determine credit worthiness of prospective borrowers.

4. The Program Should Continue During the Pendency of Evaluation

CUB/City support the use of an independent evaluator for the OBF Programs. The Commission, and all stakeholders, will benefit from a coordinated evaluation process that enables comparison across the participating utilities and, therefore, CUB/City recommend that one statewide evaluator be retained to both facilitate consistent evaluation and comparison and to lower overall evaluation costs.

The evaluation process should be begun as soon as possible under the terms of the statute so that any gap between the evaluation of the OBF Program and Commission review of that evaluation, and decision on any modifications is as short as possible. Additionally, from the Utilities PDD it is unclear what will happen to the OBF Program while the evaluation is conducted and the Commission presents its findings to the General Assembly. CUB/City believe that the programs should be continued during the pendency of the evaluation. Additionally, according to CUB/City, to ensure that Program participants and interested stakeholders can provide feedback, the evaluator should present its findings in a series of workshops held during the year provided for the evaluation.

5. Reconnection

The Utilities note that in the event of non-payment by a customer of loan amounts due, the Utilities may terminate service, under existing collection procedures. According to CUB/City, the Utilities do not address how a customer who has had their service disconnected can have their service reconnected. Additionally, according to CUB/City, it is unclear what amount a customer participating in the OBF Program would have to pay for reconnection. Therefore, CUB/City recommend that the reconnection amount include only those loan payments missed since the disconnection and not the entire amount due under the loan.

B. Reply to Staff

1. Loan Origination Fees

CUB/City disagree with Staff's position that loan origination fees should be paid for by the customer receiving the loan - either by the lender incorporating its processing costs into the interest rate to successful borrowers or by the lender including the origination fee in the loan amount to be financed and repaid. CUB/City note that while no clear or consistent definition of "program costs" or "administrative costs" has been put forth in this proceeding, CUB/City believe that loan origination fees are program costs.

Moreover, CUB/City disagree with Staff's reasoning that the fees should be on the consumer because the consumer is the one that receive the benefits from the avoided costs associated with the measure. In CUB/City's view, there are societal, monetary and environmental benefits resulting from avoided electricity costs as well. Electricity generation sources are, for the most part, not a renewable resource and energy efficiency measures - such as those financed through an OBF Program - will reduce the overall amount of electricity used.

Also, CUB/City note that Staff's position would unnecessarily raise the cost of a eligible measure and thus limit either the number of measures which could be financed or the number of customers who could participate in the program. In CUB/City's opinion, documents prepared for the loan, checks on utility bill payment history and other functions are required for the program to operate efficiently and effectively and, as such, are program costs. These are administrative in nature and not different from any other program cost. Accordingly, CUB/City agree with the Utilities that loan origination fees can be properly classified as "administrative costs" as provided for by Section 19-140(f) of the Act.

C. Reply to the AG

1. Budget Cap

CUB/City agree that the Company's proposed program costs are too high, particularly given the potential economies achieved by using existing energy efficiency vendor networks, but CUB/City do not agree that a cap should be imposed. In particular, CUB/City note that it is not clear what types of costs are considered "program costs" as opposed to "administrative costs". CUB/City recommend that NS/PGL

address this issue in its Reply Comments because in many other contexts, these are two separate and distinct types of costs.

2. Underwriting Criteria

CUB/City agree with the AG that the Utilities should provide more detail on it proposed credit check methodology. CUB/City continue to believe that the best evidence of whether a customer will default under the OBF Program is the customer's utility bill payment history. However, CUB/City understand that as the OBF Program includes more expensive measures, the tiered approach to credit checks suggested by the AG may be appropriate. CUB/City recommend that any final determination on when it might be appropriate to use credit checks be reserved pending a final list of eligible program measures from the Utilities.

VII. AG's Position

A. Initial Comments

1. Budget Cap

According to the AG, the Utilities have provided no information regarding their Program Costs. The AG cites the testimony of NS/PGL witness Gaeto and the PDD and suggests that there is no consideration for keeping costs reasonable, especially those costs that will flow through to rate payers. The AG proposes that the Commission require the Utilities to maintain a program budget no greater than 10% of the Program amount available or $250,000.

2. Underwriting Criteria

According to the AG, the Utilities do not consider the costs associated with an extensive credit check. At issue here is the need for the Utilities to consider what credit check information is necessary to balance customer credit concerns with the desire to not exclude interested customers that do not meet stringent credit criteria. The AG also argues that if the credit check is too costly, the interest rate of the loan will be inflated or the additional costs will be socialized to all ratepayers.

The AG notes that, under the Act, the lender gets paid regardless of the credit check or whether or not the customer pays the utility. According to the AG, if the lender gets an additional fee through a higher interest rate or such costs are passed through to ratepayers as program costs, the lenders profit incentive is to require an extensive credit check. Thus, the AG argues that it is important for the Utilities to spell out in the RFP exactly what it expects the credit check methodology to look like in order to properly align incentives. Further, the AG asserts that the Commission should require the Utilities to apply a tiered credit check approach that: 1) limits the requirement to prior bill payment history for measures under $1,000; and 2) applies a specific formula or methodology that does not inflate the interest rate or cause additional costs to be socialized to rate payers for measures greater than $1,000. This methodology should be clearly stated in the PDD and the RFP.

3. Security Interest

The AG asserts that the Utilities have not provided any information as to what "cost effective methods" to obtain a security interest means. Additionally, even without the Utilities having a security interest, a customer has a strong incentive to pay for the measure or risk potential gas service cutoff. Under the Act, "amounts due under the program shall be deemed amounts owed for residential… gas service" and that "the utility retains its right to disconnect a participant that defaults on the payment of its utility bill." 220 ILCS 5/19-140(c)(5)-(6). For these reasons, the AG maintains that the Utilities must define their reasoning as to what exactly "cost effective methods" to obtain a security interest means as this information needs to be stated clearly in the PPD. Additionally, the AG states that any request by the Utilities to the lender related to the security interest filings through the RFP process must provide a cost breakdown by the lender. The AG recommends that the Commission disallow any costs associated with obtaining a security interest as not "prudently incurred costs of offering a program approved by the Commission pursuant to this Section…" 220 ILCS 5/19-140(f).

B. Reply to CUB/City

1. Continuing Program during Evaluation

The AG believes it is premature to support the CUB/City recommendation that the program should continue during the pendency of the evaluation. The AG sees too many issues, including Program costs, that must be worked out regarding the Utilities' Proposed Program.

2. FI Selection Process

The AG agrees with CUB/City's recommendation to include CUB/City, the AG and Staff as members of the RFP evaluation committee, but believe that in order to make a meaningful contribution to the evaluation process, the AG and CUB should be voting members of the committee and not just advisors.

3. Underwriting Criteria

Although the AG continues to recommend its tiered approach to determine what type of credit check methodology to utilize, the AG would accept CUB/City's recommendation to rely solely on bill payment history.

4. Reconnections

The AG supports the CUB/City recommendation regarding the amounts owed to the utility to enable reconnection and believes that it adds an important consumer protection element to the Program.

C. Reply to Staff

1. Budget Cap

The AG notes that a Staff data request response provided an Annual Estimated Expense budget from NS/PGL that was not provided by the Utilities. This response from the Utilities shows that NS/PGL estimate their three-year program costs at $2.705 millions, or approximately 108% of the $2.5 million amount provided for the Program

under Section 19-140(c)(7) of the Act. The AG states that the NS/PGL proposal to spend so much money on administrative expenses is excessive. The AG continues to recommend that a cap be imposed.

VIII. NS/PGL Reply Comments

A. Loan Origination Fees

The Utilities state their decision to treat loan origination fees as Program costs arose out of workshop discussions that preceded their filing. The rationale was that such treatment would likely make more measures eligible and the Program more successful. As CUB/City states, there could be benefits beyond those participate in the Program. The Utilities, however, state that they would not oppose the Commission adopting Staff's proposal.

B. Budget Cap

Also with respect to cost recovery, the Utilities agree with Staff that the Commission lacks authority to impose a cap on its recoverable Program costs. The guidance that section 19-140(f) gives on cost recoverability is that the costs be "prudently incurred" and that they include without limitation, start-up, administrative and evaluation costs. The law states, in two places, that "all" such costs are recoverable. The Utilities aver that Section 19-140(f) and Section 8-104, the section under which the Utilities will file an energy efficiency program and a cost recovery tariff, are unambiguous about their right to recover Program costs.

Further, the Utilities argue the conjecture about whether their current estimate of costs is reasonable is irrelevant to this proceeding. In this proceeding, the Utilities are not seeking approval of costs they have incurred to date or of their cost recovery tariff. They provided a cost estimate for informational purposes. The Utilities argue that Section 19-140 does not require submission of a budget or estimated costs.

C. Selection of the FI

With respect to CUB/City's concerns about the selection of the FI, the Utilities state that they do not envision the IEA having veto authority in the selection process and that all the utilities will be involved. Each utility will have its own agreement with the FI and will need to ensure that its FI agreement is adequate to allow the utility to meet its statutory obligation. The Utilities aver that offering an OBF Program is a responsibility placed on the utilities. While the collaborative workshop was very helpful in developing the Program, it is a Program for which the Utilities must take responsibility. Consequently, the Utilities oppose proposals to expand the evaluation process beyond the utilities and the IEA, whom they selected to assist them.

D. Security Interest

The Utilities cite Section 19-140(c)(6) which states, in part, that "[i]n addition, that gas utility shall retain a security interest in the measure or measures purchased under the program . . ." but the Utilities agree that perfecting or enforcing the security interest may not be cost-effective in all cases and do not propose to do so in all cases. The Utilities note, however, that an unperfected security interest has relatively little value,

and perfecting the interest through filing the appropriate forms and incurring the generally small per transaction charge for doing so may be appropriate in some cases. The Utilities are looking to the FI for assistance in developing a cost-effective means of addressing the security interest, which is a way to hold down costs to all customers - both participants who should bear any costs associated with perfection or enforcement of the security interest and non-participants who will be responsible for uncollectible expenses associated with participants who fail to pay their loan amounts and for Program costs that are not allocable to participants.

The Utilities state that the AG's statements about cost recovery should be rejected.

E. Underwriting Criteria

With respect to the AG's and CUB/City's proposals, the Utilities note that law charges the FI with this responsibility and they will defer to the FI's expertise in fulfilling this responsibility.

Subject to the FI's input, however, the Utilities disagree that bill payment history should be the sole criterion. They state that bill payment history is only one aspect of a customer's creditworthiness. The Utilities report to credit agencies and, therefore, a customer's credit report would include bill payment history as a factor in the customer's overall credit scores. Also, a customer may have limited or no bill payment history, which would require a different approach for such a customer. The Utilities also disagree with a hybrid approach because it would unnecessarily add complexity to the process.

F. Reconnection Amounts

Initially, the Utilities note that the law does not expressly address an involuntary disconnection. Because the loan becomes amounts owed for utility service, the Utilities argue that it is reasonable to conclude that the full amount becomes due and owing upon service disconnection, whether voluntary or involuntary.

NS/PGL do not support an approach that would increase their uncollectible expense, which other customers would bear, nor one that would make it unnecessarily difficult for a customer to have service reconnected. They state that they do not oppose CUB/City's proposal, but argue that there are practical difficulties that CUB/City have not addressed. For instance, CUB/City's example is a very simple situation of a customer who has been off the system for only two months. But the Utilities ask whether CUB/City's proposal would apply equally no matter how long a customer had been off the system. The Utilities state that tracking loan amounts for an extended period and tagging those amounts to a customer when he reapplies for service many months after disconnection may be cumbersome. NS/PGL state that unlike a normal situation where a customer whose service is disconnected owes the utility a fixed amount upon disconnection, the situation posed by the CUB/City proposal is that the amount owed by the customer increases each month by the loan payment amount.

As a second example, the Utilities states that the CUB/City proposal does not address the Utilities' obligation to continue paying the FI. At some the point, NS/PGL

assert that they may fully pay the loan because it would create a lower uncollectible expense to do so, rather than continue making payments that include interest. In such a case it would be in appropriate for the customer to owe upon reconnection only the loan amount associated with missed monthly payments. Finally, the FI agreements, with the customer and the utility, will affect the feasibility of the proposal. For these reasons, if the Commission adopts CUB/City's approach, the Utilities state that more guidance is needed about its implementation.

G. Verification of Furnace Installation Savings

The Utilities do not support CUB/City's proposal to sample 1/3 of all furnaces installed. They state that it is an additional layer of analysis not required by the law and unnecessarily adds costs to the Program.

H. Statewide Evaluator

The Utilities oppose the propose to utilize a statewide evaluator and note that each utility's OBF Program will have elements unique to its service territory. Moreover, to the extent that there is interaction between the OBF Program and the energy efficiency programs developed under Section 8-104 of the Act, that interaction will be unique to each utility.

I. Continuation of Program During Evaluation

The Utilities agree that the Program should continue during the evaluation period.

The Utilities state that they defer to the Commission to determine whether the evaluator should present its recommendations in a workshop setting. The Utilities argue that their proposal satisfies the requirements of the Act and they will ensure that their agreement with the evaluator requires the timely submission of a report to the Commission. They state that after that submission, it is for the Commission to determine what, if anything, happens beyond the Commission's report to the Governor and the General Assembly.

IX. Commission Analysis and Conclusion

The Utilities have proposed an OBF Program that complies with the statute and is approved with minimum modification. This approval recognizes that the Utilities, in their reply comments have accepted many of the proposals of various parties. Only a few issues remain that require discussion and are addressed below.

A. Eligible Measures

1. Loan Origination Fees

Although Staff is undoubtedly correct that loan origination fees are generally paid by the individual applying for financing, this is not a typical financing situation. These loans do not just benefit the individual participants as suggested by Staff, but rather the Commission agrees with CUB/City's view that lowering electricity usage has monetary and environmental benefits that will accrue to not just the individual customer but to society at large and, as such, these costs are appropriately recovered through the Utilities' automatic adjustment clause tariff.

Also, Staff's position would unnecessarily raise the cost of an eligible measure and thus could limit either the number of measures which could be financed or the number of customers who could participate in the program. Documents prepared for the loan, credit checks and other functions are required for the program to operate efficiently and effectively and as such are program costs. These are administrative in nature and not different from any other program cost. Accordingly, the Commission agrees with CUB/City that loan origination fees can be properly classified as "administrative costs" as provided for by Section 16-111.7(f) of the Act and recovered through NS/PGL's automatic adjustment clause tariff.

This same reasoning applies to any costs that may be incurred to perfect security interests and the costs to provide information to consumers.

2. Furnace Verification

The Commission agrees with the Utilities that this proposal adds unnecessary costs to the program.

3. Miscellaneous

It is not clear from the Utilities' filing how a consumer will know what measures qualify. Is it just that certain models will be determined to qualify under the statute or will there be some determination made for each consumer based on the equipment the consumer is replacing? It is also not stated how often the list will be updated.

As discussed below, the Commission does not have the jurisdiction to determine whether the gross receipts tax should apply to the financing payment. In the event it is determined that the gross receipts tax does apply, this should be recovered from all ratepayers and not the individual participant. Thus, it would play no part in determining the eligibility of measures.

B. FI Selection

1. Intervenors as Members of the Evaluation Committee

As with other issues in this proceeding, the Commission will turn to the plain language of the statute for guidance. It states that the utility shall issue an RFP and the "utility shall select the winning bidders based on its evaluation." 220 ILCS 5/19-140(c)(2); 220 ILCS 5/16-111.7 (c)(2) (emphasis added).

CUB proposes that it, the AG and Staff be named members of the RFP Evaluation Committee. The AG goes further and proposes that it, CUB and Staff be named voting members. CUB does not specify what role it intends to play as a member of the Evaluation Committee, but its reason for the request is that it wishes to stay informed of deliberations or actions.

The Commission agrees with NS/PGL that, pursuant to the statute, selecting the FI is the utility's responsibility and there is no basis for requiring the affected utilities to allow the workshop participants to participate in the selection process. The AG's proposal conflicts with the statutory right/directive that the utility shall make the selection. Not only that, it is not clear what additional value or expertise would be brought to the OBF Program to have these parties vote on the selection of the FI.

The Commission notes that ComEd, in Docket 10-0091, proposes to update interested stakeholders throughout the RFP process concerning, for example, the types of responses it is receiving from lenders. The Commission finds this to be a reasonable solution to CUB's concern that it will not be informed of the deliberations or actions and directs NS/PGL to provide the intervenors with similar updates. Also, Staff is directed to reconvene the workshop participants after the RFP process is concluded to provide the utilities an opportunity to provide the results of the RFP process and the list of eligible measures.

2. Weighting

As far as shifting the weighting in the evaluation process, the Commission finds that the affected utilities have proposed a balanced approach and we decline to adopt CUB/City's proposal. The Commission does take this opportunity to note that we have every expectation that these will be very low interest loans. Pursuant to the statutory scheme, these loans hold no risk for the FIs. For that matter, there is no risk for the Utility either because any unpaid loans will be recovered by the utilities from ratepayers through their uncollectible riders. Once the interest rate is known, the utility is directed to file that with the Commission.

C. Underwriting Criteria

Several options have been proposed for determining the credit-worthiness of potential program participants. The Commission agrees with the Utilities, however, that this is a matter best left to the FI. In fact, the statute itself recognizes that the FI will be conducting credit checks or other appropriate measures to limit credit risk. The FI should utilize its expertise to determine what measures should be taken to limit credit risk.

Ensuring that only credit-worthy customers participate in the program is in the best interest of ratepayers. The FI is guaranteed to recover its investment pursuant to the statutory scheme and it ratepayers that will be left footing the bill for bad loans.

D. Reconnection

Although NS/PGL suggest that this situation is not addressed by the statute, the Commission does not agree. Several provisions in the statute lead us to disagree. First, the oft-cited sentence that amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial gas service. 220 ILCS 5/19-140(c)(5). Because the amounts due under the program are deemed amounts owed for utility service, the Commission's rules apply, specifically Part 280.

And, second, the statute recognizes that the utility retains its right to disconnect a participant the defaults on the payment of its utility bill. 220 ILCS 5/19-140(c)(6). This is not granting the utility a new right, but rather recognizing that because these amounts are amounts owed for utility service, the utility continues to have the right to disconnect customers that do not pay their electric bills, pursuant to Part 280. Similarly, because these amounts are amounts due for utility service, the Commission's rules for reconnection would apply.

The Commission notes that NS/PGL half-heartedly agrees with CUB's proposal that would require only those payments that have been missed to be paid prior to reconnection. It would appear that Section 280.110 of our rules, which governs Deferred Payment Agreements, also applies to this situation. Our reading of this section supports not only CUB's proposal but also that the utility could agree to enter into a deferred payment agreement with the participant for the missed payments.

Ideally, reconnection of program participants should be the same across all the affected utilities with the goal being to recovery as much of the loaned amounts from the participants to avoid sending these amounts uncollectibles. Without doubt, all utilities must comply with Part 280 for both disconnections and reconnections.

E. Security Interest

The statute gives the utilities the right to retain a security interest in the financed energy efficiency measures. The fact that utilities are given this right, and not the FI, is consistent with the statutory scheme that utilities pay the FI whether or not the individual participant pays his or her utility bill. Accordingly, it is left to the utility to attempt to collect as much money from the individual participant or, if necessary, attempt to repossess the item. NS/PGL's proposal to work with the FI on to determine when this would be financially necessary is a reasonable approach. As Staff points out, perfecting the security interest may cost more than would be recovered.

The AG's suggestion that the Utility should be barred from any costs related to filing a security interest is contrary to the statutory scheme and fails to protect ratepayers. If the Utilities' and the FI institution determine that it makes financial sense to perfect a security interest, this protects ratepayers because any unpaid loans and any money not recovered through repossession will be charged to ratepayers.

F. Budget Cap

The AG's request to cap Program Fees at 10% of the program dollars is denied. It is contrary to the express statutory language that the utilities are allowed to recover all of their prudently incurred costs. All costs that the utilities seek to recover from ratepayers will be subject to a prudency review in the annual reconciliation proceeding for the utilities' automatic adjustment clause rider.

Any estimates that the Utilities' have provided are merely informational. The Commission's approval of the OBF program does not include approval of the associated proposed budget amounts.

G. Evaluation

1. Continuation of the Program During the Evaluation

CUB/City are concerned about what happens to the OBF Program during the pendency of the evaluation. Although both NS/PGL and CUB/City believe that the program should continue throughout, the AG believes it is premature to make such a determination. The Commission finds the AG's concerns to be unwarranted. These are revolving funds and presumably many customers will choose shorter terms that will then free up funds that can be loaned to other customers. One topic to consider in the

evaluation is whether the amount financed should exceed the $2.5 million that all the utilities have requested.

2. Statewide Evaluator

CUB/City propose that a statewide evaluator be utilized, but the Utilities object noting that each utility will have issues unique to its program. While the Commission agrees that utilizing a statewide facilitator may be more efficient, we recognize that it may not be feasible and leave this decision to the affected utilities to be determined through the RFP process for the evaluator.

X. Taxes

In Nicor's related dockets and here in this docket, NS/PGL ask the Commission to determine whether the Public Utility Tax applies to the revenue from the OBF Program. These utilities did not explain why such a determination was necessary in this docket and no argument or further explanation was offered. The reply comments were the last scheduled filing and, therefore, no party was able to respond. Accordingly, the ALJ requested that parties file additional comments addressing the tax issues. Staff, CUB and NS/PGL filed additional comments and Staff and NS/PGL filed additional replies. No other parties filed additional comments in this proceeding.

A. NS/PGL

1. Jurisdiction

According to NS/PGL, there are three taxes, measured on gross receipts or gross revenue, that Petitioners believe apply to OBF Program revenue. The two taxes measured on gross receipts are: (1) Illinois Gas Revenue Tax; and (2) Municipal Utility Tax. The public utility funding tax is imposed on public utilities and is based on "gross revenue."

The Commission does not have jurisdiction to determine the applicability of the Illinois Gas Revenue Tax ("GRT") or the Municipal Utility Tax ("MUT"). "The Commerce Commission, 'because it is a creature of the legislature, derives its power and authority solely from the statute creating it, and its acts or orders which are beyond the purview of the statute are void.' (City of Chicago v. Illinois Commerce Com. (1980), 79 Ill. 2d 213, 217-18, 37 Ill.Dec. 593, 402 N.E.2d 595, citing People ex rel. Illinois Highway Transportation Co. v. Biggs (1949), 402 Ill. 401, 409, 84 N.E.2d 372.)." Illinois Power Co. v. Illinois Commerce Comm'n., 111 Ill. 2d 505, 510 (1986). The GRT and MUT are not within the Act. With respect to these taxes, there is no other law that vests any authority in the Commission. Accordingly, NS/PGL opine that the Commission lacks authority to determine the applicability of these taxes. It does, however, have authority under Section 19-140 of the Act to determine if costs that the utility may incur in seeking an authoritative ruling about the applicability of these taxes, are recoverable Program costs. That authority derives from the fact that Section 19-140 is part of the Act from which the Commission's powers derive.

Also, NS/PGL opine that the Commission does have jurisdiction to determine the applicability of the Public Utility Tax. As stated above, this tax is authorized by the Act, and the Commission's authority derives from the Act. An example of the Commission's

authority is in Section 2-202(k) of the Act, which authorizes the Chairman or Executive Director to make refunds if he determines "the person or public utility will not be liable for payment of such fees, taxes or charges during the next 24 months and he determines that the issuance of a credit memorandum would be unjust." 220 ILCS 5/2-202(k). Petitioners respectfully request that the Commission determine whether the Public Utility Tax applies to the OBF Program revenues.

The Commission does not need to make determinations concerning taxes in this docket although it would be administratively efficient to do so. If the Commission does not act in this docket concerning the Public Utility Tax or the recoverability as Program costs of certain costs that utilities may incur to receive an authoritative decision concerning the GRT or MUT, it would not jeopardize the implementation of the Program. However, particularly with the submission of the additional comments and reply comments requested by the March 25, 2010 Notice, the record should be sufficient for the Commission to address these issues. It would be efficient to make these determinations in this proceeding, rather than open a separate proceeding for this limited purpose.

2. Applicability of Taxes

a) Gas Revenue Tax ("GRT")

The GRT is imposed under the Gas Revenue Tax Act ("GRT Act"). 35 ILCS 615/1 et seq. It is imposed on public utilities, including Petitioners, based on gross receipts. In relevant part, the GRT Act states:

> A tax is imposed upon persons engaged in the business of distributing, supplying, furnishing or selling gas to persons for use or consumption and not for resale at the rate of 2.4 cents per therm of all gas which is so distributed, supplied, furnished, sold or transported to or for each customer in the course of such business, or 5% of the gross receipts received from each customer from such business, whichever is the lower rate as applied to each customer for that customer's billing period, … .

35 ILCS 615/2. Section 1 of the GRT Act defines "Gross Receipts" as:

> "Gross receipts" means the consideration received for gas distributed, supplied, furnished or sold to persons for use or consumption and not for resale, and for all services (including the transportation or storage of gas for an end user) rendered in connection therewith, and shall include cash, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service costs, or any other expense whatsoever.

35 ILCS 615/1. Section 19-140(c)(5) of the Act states, in relevant part, "[a]mounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial gas service." 220 ILCS 5/19-140(c)(5).

Under the GRT Act, the gas utility is liable for a tax based on consideration it receives for "all services … rendered in connection" with the distribution, supply,

furnishing or sale of gas to persons for use or consumption. A customer participating in the OBF Program will pay to the utility, not to the lender, the amount it owes for its OBF Program loan. The amounts that the participating customer owes the utility under the OBF Program, by law, are amounts owed for utility service. The express language of the GRT Act and Section 19-140 is clear that the consideration that the utility receives in connection with the OBF Program is for utility service. Consequently, the GRT applies to these receipts.

Moreover, there is case law supporting such an interpretation of "service." An Illinois Appellate Court, affirmed by the Illinois Supreme Court, stated:

> In our opinion, rental payments, too, for equipment and appliances used for the distribution, supply, furnishing or sale of electricity or gas are includable in "gross receipts." It is no answer, we think, to say that the same equipment can be obtained from sources other than public utilities. It is hard to see how it can be argued looking only to the words themselves and without resort to rules for statutory construction or legislative history that the leasing of electrical or gas appliances (refrigerators, ranges, etc.) are not associated with, or attached to, the use or consumption of gas or electricity which has been distributed, supplied, furnished or sold by the utility.

Illinois Power Co. v. Mahin, 49 Ill. App. 3d 713, 718 (4th Dist. 1977) ("Mahin"), aff'd 72 Ill. 2d 189 (1978). The OBF Program is designed to allow utility customers to borrow funds from a third party lender in order to purchase equipment that qualifies as energy efficiency measures approved under the OBF Program with no required initial upfront payment, and to pay the cost of those measures and services over time on their utility bill. NS-PGL Ex. 1.0 at 4-5. In Mahin, it was not relevant that equipment could be purchased from a vendor other than the utility. The fact that the utility is not selling the measures under the OBF Program does not, therefore, affect the inclusion of OBF Program revenues in "gross receipts" for GRT purposes. The purpose of the measures financed under the OBF Program is to reduce gas consumption, i.e., in the words of the Mahin Court, the measures are "associated with, or attached to, the use or consumption of gas or electricity which has been distributed, supplied, furnished or sold by the utility." Under the express language of the GRT Act and Section 19-140 of the Act and Mahin, the GRT applies.

There are several exclusions from "receipts" listed in the definition, including "iii) any finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment;". 35 ILCS 615/1(iii). Petitioners do not believe that this exclusion applies. First, as explained above, Section 19-140 defines the amounts owed as for a "service." Second, neither the statute nor the Illinois Department of Revenue's ("IDOR") rules define the term "finance or credit charge." However, the items in exception (iii) are all in the nature of amounts applied to some base amount. For example, the charge for late payment means the amount resulting from the application of a rate to an amount past due and not the past due amount itself. The OBF Program payment in question is for the purchase of the measure. The utility is merely the collector of payments for that measure, and it is not assessing any charge on any amount due and owing, although

such a finance charge is likely embedded within the amount that the utility is required to collect. Petitioners do not believe the exception applies.

Finally, the IDOR Memorandum that Staff included with its Reply Comments is not inconsistent with Petitioners' interpretation. Instead, the IDOR Memorandum concluded that there were constitutional issues associated with inclusion of the OBF Program revenues in "gross receipts" for GRT purposes.

b) Municipal Utility Tax ("MUT")

The Illinois General Assembly has granted municipalities the authority to tax persons in the business of distributing, supplying, furnishing or selling gas to persons for use or consumption and not for resale. This is similar to the Illinois GRT. The relevant state law (the Illinois Municipal Code) states, in relevant part:

> The corporate authorities of any municipality may tax any or all of the following occupations or privileges:
>
> ***
>
> 2. Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of a municipality of 500,000 or fewer population, and not for resale, at a rate not to exceed 5% of the gross receipts therefrom.
>
> 2a. Persons engaged in the business of distributing, supplying, furnishing or selling gas for use or consumption within the corporate limits of a municipality of over 500,000 population, and not for resale, at a rate not to exceed 8% of the gross receipts therefrom. If imposed, such tax shall be paid in monthly payments.

65 ILCS 5/8 11 2. "Gross Receipts" is defined, in relevant part, as:

> "Gross receipts" means the consideration received for distributing, supplying, furnishing or selling gas for use or consumption and not for resale, … and for all services rendered in connection therewith … and shall be determined without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service cost, or any other expenses whatsoever. … .

65 ILCS 5/8 11 2(d).

The relevant language from the Illinois Municipal Code is identical or nearly identical to the language in the GRT Act, and the rationale set forth above for the GRT is equally applicable to the MUT. It is not apparent to Petitioners how the IDOR Memorandum would apply to the MUT issue.

c) Public Utility Tax

Section 2-202 of the Act imposes a tax on public utilities based on the utility's gross revenue. 220 ILCS 5/2-202. Section 3-121 of the Act defines "gross revenue" as follows:

> As used in Section 2 202 of this Act, the term "gross revenue" includes all revenue which (1) is collected by a public utility subject to regulations under this Act (a) pursuant to the rates, other charges, and classifications which it is required to file under Section 9 102 of this Act and (b) pursuant to emergency rates as permitted by Section 9 104 of this Act, and (2) is derived from the intrastate public utility business of such a utility. Such term does not include revenue derived by such a public utility from the sale of public utility services, products or commodities to another public utility, to an electric cooperative, or to a natural gas cooperative for resale by such public utility, electric cooperative, or natural gas cooperative. "Gross revenue" shall not include any charges added to customers' bills pursuant to the provisions of Section 9 221, 9 221.1 and 9 222 of this Act or consideration received from business enterprises certified under Section 9 222.1 of this Act to the extent of such exemption and during the period in which the exemption is in effect.

As stated above, amounts due under the OBF Program are for gas service. The OBF Program is subject to schedules filed by Peoples Gas and North Shore in accordance with Section 9-102 of the Public Utilities Act. 220 ILCS 5/9-102. The exceptions described in Section 3-121 do not apply. Petitioners believe the Public Utility Tax applies to the OBF Program revenue. The IDOR Memorandum does not address this tax.

3. Reply to Staff

Staff recommended that the Commission defer consideration of whether the PUF Tax applies to OBF revenues. Staff Add. Comm. at 8. However, Staff analyzed the relevant statutory language and concluded that "the funds financed under the on-bill financing program appear to constitute business revenue over which the Commission has jurisdiction under the provisions of the Public Utilities Act." Staff Add. Comm. at 12. Petitioners concur with Staff's thorough analysis. As stated above, Petitioners prefer that the Commission address the PUF Tax in this proceeding, and Staff's analysis provides substantial support for the Commission to reach a decision.

Staff disagrees with Petitioners' "request that the Commission find in this proceeding that costs incurred to receive a binding determination of the applicability of the Gas Revenue Tax and the municipal utility tax are recoverable Program costs." Staff Add. Comm. at 15. Petitioners are not asking the Commission to opine on the prudence of specific, yet-to-be incurred costs. They are asking the Commission to find that, if a utility seeks binding authority from a taxing authority concerning the applicability of the GRT and MUT, such costs fit under the rubric of recoverable Program costs, subject to prudence review of the specific costs incurred and for which the utility seeks recovery. Staff recommended "that the utilities and other interested parties hereto direct any questions or comments regarding the Department [of Revenue]'s response to the Department [of Revenue] and report the results of these inquiries to the Commission. Further, to the extent any municipal taxes may apply, Staff recommends that the Commission request the gas utilities to seek clarification with the proper tax authorities and report the results of these inquiries to the Commission." Staff Rep. Comm. at 6. If

the Commission adopts Staff's recommendation, Petitioners request that the Commission find that the costs of pursuing these efforts are a type that fits in the category of recoverable Program costs and that future claims for recovery would not categorically be denied. Petitioners agree that this proceeding is not the forum to approve recovery of these costs, and they are not seeking such pre-approval or a binding finding of prudence. They are requesting guidance on whether this type of cost is recoverable as a Program cost.

Petitioners note that, to the extent they make informal inquiries, there are unlikely to be incremental costs associated with those efforts. However, it is Petitioners' experience that the costs of a properly crafted request for a binding private letter ruling from the Illinois Department of Revenue ("IDOR") may be several thousand dollars. As stated in their Additional Comments (page 11), such a request would not be needed but for the statutorily mandated OBF Program. For those reasons, these types of costs should be recoverable Program costs. If the Commission chooses not to address the recoverability of such costs, then Petitioners respectfully request that the Commission state clearly, as Staff suggested (Staff Add. Comm. at 15), that it is not requiring utilities to take these steps and will not intercede if utilities choose not to do so.

In its analysis of the PUF Tax, Staff referred to potential arguments countering its analysis and stated that "[t]o the extent these potential counter arguments are persuasive, in Staff's view, a legislative change ought to be considered." Staff Add. Comm. at 13. Petitioners offered a similar suggestion. Pet. Rep. Comm. at 9. A caveat to a legislative change is that the mechanism should be an exemption within the applicable tax laws and not revising language in Section 19-140 of the Act. For example, altering the sentence in Section 19-140 that defines the OBF Program amounts owed as amounts owed for utility service would not, by itself, resolve the tax question. The fact that the amounts owed are for utility service is an important part of the tax analysis, but it is not the sole support for the conclusion that the GRT and MUT apply. Revising that language, and nothing more, does not necessarily mean that amounts that the utility receives from the OBF Program are not part of its "gross receipts." An exemption in the tax law, however, would resolve that question.

4. Reply to CUB

CUB stated that it agreed with the IDOR's conclusions concerning applicability of the GRT. Petitioners note that Staff confirmed with the IDOR that the IDOR Memorandum is not binding.

CUB stated that it agrees that the Commission should seek clarification with the applicable taxing authorities to determine whether MUT applies to OBF Program payments. CUB Add. Comm. at 5. Staff recommended only that the utilities seek guidance from the municipal taxing authorities (Staff Rep. Comm. at 6); it did not suggest that the Commission undertake that effort. If CUB is proposing that the Commission or Staff seek guidance from the various municipal taxing authorities, Petitioners disagree with that approach. As Staff agrees (Staff Add. Comm. at 5), the Commission lacks jurisdiction over the GRT and the MUT. While it was helpful for the Staff to solicit input from the IDOR concerning the GRT, the Commission cannot make a binding determination on the applicability of the GRT or the MUT. Accordingly, if

additional guidance is appropriate, the taxpayer (i.e., the utility) should seek that guidance from the taxing authority.

Petitioners agree with CUB's conclusion that the Commission has jurisdiction over the PUF Tax. CUB Add. Comm. at 6. However, Petitioners disagree that the PUF Tax is a Program cost. Id. Petitioners recover their costs associated with the GRT, MUT and PUF taxes from customers based on the gross receipts or gross revenue represented by each customer's bill for utility service. As required by Sections 9-221 and 9-222 of the Act, Petitioners show the taxes as separate line items on the customer's bill. 220 ILCS 5/9-221, 9-222. The amount of each tax is based on the bill amounts that represent "gross receipts" or "gross revenue," as applicable, and are, therefore, tied directly to the customer from whom Petitioners recover these costs.

Petitioners agree with Staff (Staff Rep. Comm. at 7) that the taxes should be participant costs and not Program costs. It is not apparent how Sections 9-221 and 9-222 would permit a different result.

B. CUB

1. GRT

CUB/City note that in section 2.1(B) of the PDD the Utilities propose that the cost of implementing the measures includes Gross Receipts Tax on the financing payment as applicable.

Staff solicited the opinion of the Illinois Department of Revenue ("IDOR") on its interpretation of whether the GRT Act applies to any OBF Program revenues. Staff Reply Comments at 6. IDOR, at the request of the Office of General Counsel of the Commission, was asked to provide an opinion on whether loan payments included on utility bills, paid by consumers to public utilities and remitted by utilities to third-party lenders pursuant to the Gas OBF Law are included within "gross receipts" for purposes of the GRT Act. Staff Reply Comments, Attachment A at 1. Although IDOR noted it was a "close call," in IDOR's opinion constitutional issues weigh in favor of a conclusion that the loan payments are not included within "gross receipts" under the GRT Act. Id. IDOR supported their conclusion by reasoning that if OBF payments are included "gross receipts," a gas utility will pay a tax of 5% on the participant's loan payments. Attachment A at 5. Because the GRT can be passed through to customers, customers will pay a 5% tax on the loan payments as well. Id. However, since the tax base for loan payments made to electric utilities is established by kilowatt hours used, not a percentage of gross receipts, a decision to included OBF payments in "gross receipts" for purposes of the GRT Act will result in gas utilities and electric utilities not being taxed uniformly. Id.

For IDOR, this raises serious constitutional uniformity issues, and since it is not reasonable to conclude the Illinois General Assembly intended to discriminate against gas utilities, gas utility customers under the programs, and companies that manufacture and sell gas using energy equipment, OBF payments should not be included in "gross receipts" and should not be subject to liability under the GRT Act. Staff Reply Comments, Attachment A at 5, 7.

CUB agrees with IDOR's conclusion. Petitioners are concerned that IDOR's memorandum addressing this issue is not binding, and as such, is not sufficient to protect the Petitioners from potential tax liability should they rely upon it over the next few months in planning their program. NS-PGL Reply Comments at 9. CUB believes IDOR's memorandum should be sufficient to allow the Commission to determine the applicability of the GRT Act to the OBF Program. However, if the Commission determines a binding opinion is necessary from IDOR, the costs associated with that opinion should be recoverable as program costs.

CUB believes that the GRT Act itself puts limitations on the meaning of "gross receipts" under the GRT Act. CUB/City Corrected Initial Comments at 3.1 Taxing laws are to be strictly construed and not extended beyond the clear import of the language used; where there is any doubt in their application, they will be construed in favor of the taxpayer. Quad Cities Open, Inc. v. City of Silvis, 208 Ill.2d 498, 508 (2004), citing Getto v. City of Chicago, 77 Ill. 2d 346, 359 (1979).

The purchase of energy efficiency equipment designed to lower a customer's overall usage includes an inspection and servicing of equipment located on customer's premises. Id.

Petitioners themselves described the program as "retrofits" of existing equipment. NS-PGL Ex. 1.0 at 5. They are clear that this program does not involve the sale of any equipment, or the lending of any money to purchase equipment by the Petitioners. By subjecting measures funded through the OBF Program to the Gas Revenue Tax Act, Petitioners inappropriately raise the cost of the measure for the individual participants. CUB/City Corrected Initial Comments at 4.

2. Municipal Utility Taxes

Staff recommends that the Commission direct gas utilities to seek clarification with the proper tax authorities and report the results of those inquiries to the Commission. Staff Reply Comments at 6. As with application of the GRT Act to OBF Program loan payments, Staff believes the only issue before the Commission is whether municipal utility taxes be treated as program costs or measure costs. Staff Reply Comments at 6-7. Petitioners agree that the ICC lacks authority to determine the applicability of those taxes to the OBF Program loan amounts, and note the City of Chicago specifically opted not to address this issue. NS-PGL Reply Comments at 8.

CUB agrees that the Commission should seek clarification with the applicable tax authorities to determine whether municipal utility taxes apply to OBF Program loan payments. However, as with the application of the GRT Act, CUB believes that the application of "gross receipts" within Article 11 of the Illinois Municipal Code to OBF Program loan amounts would present municipalities with the same concerns as expressed by IDOR, that is, the tax bases for natural gas and electric consumption are different. See, e.g. 65 ILCS 5/8-11-2(2a) and 2(3).

3. Public Utility Fund Tax

The Public Utilities Act ("PUA") imposes Public Utility Fund ("PUF") tax upon "gross revenue" which is collected by a public utility. 220 ILCS 5/2-202. For the

purposes of the PUF tax, “gross revenue” is defined to include all revenues collected by a public utility subject to regulation under the PUA, Section 3-121, but to exclude revenue from the production, transmission, distribution, sale, delivery or furnishing of electricity, Section 2-202. 220 ILCS 5/3-121; 220 ILCS 5/2-202.

Petitioners raise the question of whether the PUF tax contained in Section 9-202 of the PUA is applicable to OBF Program loan payments received by natural gas utilities. NS-PGL Reply Comments at 9. The Petitioners believe the Commission does have authority to determine the applicability of that tax, and that it should do so in this proceeding. NS-PGL Reply Comments at 8.

CUB agrees that the Commission has the authority to determine whether the PUF tax is applicable to OBF loan payments. Should the ICC determine that the PUF tax is applicable, CUB recommends the ICC clarify how the tax is to be treated for the purposes of the OBF Program.

CUB believes that since the individual taking out the loan is not the only person to benefit from this program – there being societal benefits resulting from avoided natural gas costs – any applicable tax should be recovered by the utilities as a part of their program costs. Energy efficiency measures – such as those financed through an OBF Program – will reduce the overall amount of natural gas used, which has monetary and environmental benefits that will accrue to not just the individual customer but society at large.

C. AG

The AG notes that NS/PGL applies the gross receipts tax to their Program. The AG agrees with CUB/City, however, that there is no basis in fact or law that supports NS/PGL’s perspective on this issue. The AG agrees with CUB that the gross receipts tax should not be included in the Program or added to the cost of the measure.

D. Staff

1. Jurisdiction

Subsection (c)(5) of the Gas OBF Law provides in pertinent part that: “Amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial gas service.” 220 ILCS 5/19-140(c)(5). In Staff’s view, this language triggers four different potential taxes. First, the Gas Revenue Tax Act (35 ILCS 615/et seq.) appears to be implicated because the funds financed under the OBF programs and paid on utility bills by their gas customers may be considered “gross receipts” under the Gas Revenue Tax Act. In addition, the Electricity Excise Tax Law (35 ILCS 640) is implicated but only to the extent a “self-assessing purchaser” pays tax in accordance with Sections 2-10 and 2-11 of the law, otherwise, this tax appears to be based upon kilowatt hours and not revenues. 35 ILCS 640/2-4, 2-10 and 2-11.

Also, the Public Utility Fund (“PUF”) Tax (220 ILCS 5/2-202) appears to be implicated because the funds financed under the OBF programs and paid on utility bills by public utility customers may be considered “gross revenues” under the definition of such term set forth in Section 3-121 of the Act. It is important to note that for purposes of imposing the PUF tax, Section 2-202(c) specifically exempts from “gross revenue”

those revenues derived "from the production, transmission, distribution, sale, delivery, or furnishing of electricity." 220 ILCS 5/2-202(c). Rather than paying PUF tax, electric utilities providing service to more than 12,500 customers in Illinois on January 1, 1995, contribute annually an aggregate sum, called a Public Utility Fund base maintenance contribution, which is based in part on the number of kilowatt hours delivered to retail customers for the prior year. 220 ILCS 5/2-203. Accordingly, the PUF tax is not applicable to ComEd or to the Ameren entities providing electric service.

In Staff's view, the Commission does not have jurisdiction to determine the applicability of the Gas Revenue Act, the Electricity Excise Tax Law or the various municipal tax laws. The PUF tax, however, is, in Staff's view, within the Commission's jurisdiction. The PUF tax funds the operations of the Commission in administering the Act. 220 ILCS 5/2-202(a) and (b). The Commission is charged with administering and collecting the PUF funds. 220 ILCS 5/2-202(f)(1)and (2). The Commission has the power to review, audit and direct returns to be corrected. 220 ILCS 5/2-202(e). The authority to direct corrections on returns and order the payments of deficiencies (and to penalize for failure to pay deficiencies) in particular provides support for Staff's view that the Commission has jurisdiction to determine if the funds financed under the OBF programs are subject to PUF taxes. 220 ILCS 5/2-202(f) and (g).

Further, it is not clear to Staff whether the Commission has jurisdiction to determine whether municipal and state tax law apply to this program. Staff sought guidance from the Illinois Department of Revenue ("IDOR") on the issue chiefly discussed in CUB's comments. The IDOR provided a response, which Staff attached to its Reply Comments. Staff recommends that the utilities and other interested parties hereto direct any questions or comments regarding the Department's response to the IDOR and report the results of these inquiries to the Commission. Also, to the extent any municipal taxes may apply, Staff recommends that the Commission request the gas utilities to seek clarification with the proper tax authorities and report the results of these inquiries to the Commission.

From Staff's perspective, the only issue before the Commission in this proceeding in connection with the taxes assessed under the Gas Revenue Act, the Electricity Excise Tax Act, the PUF tax or municipal tax laws is whether such taxes, if assessed by the applicable tax authorities, should be considered program costs that may be passed through to ratepayers generally or if such taxes should be considered costs of implementing an eligible measure, to be taken into account in determining the cost effectiveness of the measure and paid by the participating customer. For many of the same reasons Staff cited in connection with loan origination fees, Staff argues that such taxes should be included in the costs of implementing a measure and paid by the participating customer.

In Staff's view, the question as to whether these taxes are appropriately assessed on the funds financed under the OBF programs does not have to be addressed in the expedited dockets authorized pursuant to the Gas OBF Law or the Electric OBF Law. Under Section (b-5) of these laws, the Commission is charged with rendering a decision regarding a request for approval of a proposed OBF program and related tariffs within 120 days after receipt of the request. If no decision is rendered

within the 120 day period, then the request shall be deemed to be approved. A deemed approval of a proposed OBF plan should not be construed to diminish the Commission's authority under the PUF tax or diminish other agency's authority under other tax laws unless the General Assembly explicitly addressed the issue in the OBF laws. Nothing in either the Gas OBF Law or the Electric OBF Law could arguably lead to such a result by a failure of the Commission to approve the proposed plans.

Furthermore, pursuant to the Gas OBF Law and the Electric OBF Law, the proposed programs are to include the statutorily required components and be consistent with the provisions of the laws that define operational, financial and billing arrangements between and among program participants, vendors, lenders, and the utilities. (220 ILCS 5/16-111.7(c), (d) and (e)). Determining which taxes may be applicable to on-bill financing amounts, and whether the taxes are within the Commission's jurisdiction, is not required as part of the approval process. The Commission may give guidance on this issue but is not required to in order to approve the plans.

Moreover, Staff asserts that the PUF tax issue is more appropriately addressed in a docket that provides for additional time to review the issues involved. Since the plans will not be implemented immediately upon approval, there is no harm in taking additional time to consider these issues while the RFP process is ongoing. Consequently, it is Staff's recommendation that the Commission consider any tax issues within its jurisdiction in a separate docket to be convened upon approval of any of the proposed on-bill financing plans.

2. PUF Tax Applicability

In order to determine if the PUF tax applies to amounts financed under OBF programs, Staff needs to interpret the PUF Act, the Gas OBF Law and the Electric OBF Law. The interpretation or construction of statutes is a question of law, to be decided by the court or tribunal. *See, e.g.*, Matsuda v. Cook County Employees and Officers Annuity and Benefit Fund, 178 Ill. 2d 360, 364; 687 N.E. 2d 866 (1997); Bruso v. Alexian Brothers Hospital, 178 Ill. 2d 445, 452; 687 N.E. 2d 1014 (1997); Branson v. Dept. of Revenue, 168 Ill. 2d 247, 254; 659 N.E. 2d 961 (1995). The primary rule of statutory construction is to give effect to the legislature's intent in enacting the statute. Bruso, 178 Ill. 2d at 451. Legislative intent should be sought primarily from the language of the statute, People v. Beam, 55 Ill. App. 3d 943, 946; 370 N.E. 2d 857 (5th Dist. 1977), because the language of the statute is the best evidence of legislative intent, Bruso at 451, and provides the best means of deciphering it. Matsuda, 178 Ill. 2d at 365. Statutes must be construed as a whole, and the court or tribunal must consider each part or section in connection with the remainder of the statute. Bruso at 451-52. If the legislature's intent can be determined from the plain language of the statute, that intent must be given effect, without further resort to other aids to statutory construction. Bruso at 452. Thus, the threshold task for a court or tribunal in construing a statute is to examine the terms of the statute. Toys "R" Us v. Adelman, 215 Ill. App. 3d 561, 568; 574 N.E. 2d 1328 (3rd Dist. 1991).

In addition, it is clear that a court must construe a statute as it is, and may not supply omissions, remedy defects, or add exceptions and limitations to the statute's application, regardless of its opinion regarding the desirability of the results of the

statute's operation. Adelman, 215 Ill. App. 3d at 568; *cf*. Thornton v. Mono Mfg. Co., 99 Ill. App. 3d 722, 425 N.E. 2d 522 (2nd Dist. 1981) (in determining that application of statute of limitations barring minor's products liability claim was proper, if perhaps harsh, the court observed that, where a statute is clear, the only legitimate role of court is to enforce the statute as enacted by legislature); People *ex rel*. Racing Bd. v. Blackhawk Racing, 78 Ill. App. 3d 260, 397 N.E. 2d 134 (1st Dist. 1979) (court observed that, though the General Assembly could have enacted a statute more effective in accomplishing its purpose than the one it did enact, the court was not permitted to rewrite the statute to remedy this defect).

But for the language in subsection(c)(5) of the Electric OBF Law and the Gas OBF Law, which deems the funds financed under the OBF programs to be amounts owed for electric or gas service, the PUF tax would not ordinarily apply to these funds. The utilities act as a conduit under these programs and do not obtain any revenues that Staff can ascertain in connection with this role. Nevertheless, the last sentence of Section (c)(5) is clear and unambiguous. It states: "Amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial [electric/gas] service." As stated above, the best evidence of the legislature's intent is the language of the statute. Bruso at 451.

This sentence in Section (c)(5) does not limit its reach to the Gas OBF Law or Electric OBF Law. Nor does it identify the purpose for considering on bill financing funds due under the program "amounts owed" for gas or electric service. Parties may speculate as to the intent of the General Assembly in adding this language; for instance, that it was added for the purpose of making it easier for the utilities to require the loan to be paid in full when there is a transfer of title to the premises or to terminate service for non-payment. But the sentence is devoid of any qualifications or explanations that limit the interpretation of this language to these purposes or to any others so this remains speculation in light of the plain meaning of the language, which is clear on its face and is broad enough to cover tax issues. Further, even if the language were ambiguous, the legislative history provides no guidance on this issue. Under rules of statutory construction, the General Assembly is assumed to know existing law and legislation that might be impacted by its statutory language. State v. Mikusch, 562 N.E.2d 168 (Ill. 1990).

The PUF tax is imposed on the gross revenues of public utilities that are subject to the PUF Act. As stated above, revenues from electricity are excluded. 220 ILCS 5/2-202. Section 3-121 of the PUA defines "gross revenue" in the following terms:

> As used in Section 2-202 of this Act, the term "gross revenue" includes all revenue which (1) is collected by a public utility subject to regulations under this Act (a) pursuant to the rates, other charges, and classifications which it is required to file under Section 9-102 of this Act and (b) pursuant to emergency rates as permitted by Section 9-104 of this Act, and (2) is derived from the intrastate public utility business of such a utility.

In addition, Section 3-121 provides certain additional exclusions, including exclusions for revenue derived from sales for resale and certain charges added to customers' bills pursuant to identified Sections of the PUA.

Because Section (c)(5) of the Gas OBF Law and the Electric OBF Law deems amounts due under the OBF programs to be amounts owed for residential and, as appropriate, small commercial electric and gas service, it follows that these amounts would be deemed revenues. Under Section 3-121 of the PUA, "gross revenues" for purposes of assessing the PUF tax, must fit into certain criteria, namely, 1) it must be collected pursuant to tariffs the company is required to file under section 9-102 (or as emergency rates), and 2) it must be derived from the company's intrastate public utility business. The Gas OBF Law and the Electric OBF Law each contemplate tariffing of the programs and the utility plans include tariffs of the OBF programs, therefore, the first criterion of the definition of "gross revenues" under the PUF Act appears to have been met. Further, by deeming the financed amounts under the OBF programs to be amounts owed for electric and gas service, the Gas On OBF Law and the Electric OBF Law would appear to require that these amounts be considered derived from the company's intrastate public utility business. The operative term ("intrastate public utility business") in the second criterion of the definition of "gross revenues", is defined in Section 3-120 of the Act. That provision states:

> As used in Section 3-121 of this Act, the term "intrastate public utility business" includes all that portion of the business of the public utilities designated in Section 3-105 of this Act and over which this Commission has jurisdiction under the provisions of this Act.

Given the broad language of the preceding definition, coupled with the statutory characterization of these amounts as amounts owed for gas and/or electric service, the funds financed under the OBF program appear to constitute business revenue over which the Commission has jurisdiction under the provisions of the Act. In addition, Section 3-121 contains examples of exemptions for certain charges appearing on bills that the General Assembly excluded from the definition of "gross revenues." For example, Section 3-121 provides: "Gross revenue" shall not include any charges added to customers" bills pursuant to the provisions of Section 9-221, 9-221.1 and 9-222 of this Act…." 220 ILCS 5/3-121. If the General Assembly intended to exempt these funds due under the OBF programs from PUF taxes, it had only to add another exemption or alternatively, to forgo characterizing these amounts as amounts owed for gas or electricity service.

Staff anticipates that arguments against this interpretation will be made. The most important of which will likely be that these OBF amounts do not appear to be actual revenues that ought to be taxed. Reasonable enough, but the Legislature in Section (c)(5) of the Gas OBF Law and the Electric On OBF Law appear to have deemed them to be just that. In light of the language of the laws, it is difficult to argue anything else other than the law ought to have been written differently.

To the extent these potential counter arguments are persuasive, in Staff's view, a legislative change ought to be considered. While the PUF tax amounts applicable to the OBF programs may be relatively insignificant, they will be passed through to the participants of the OBF programs, and if they default, to ratepayers at large. In addition, Staff has not considered fully the possible application of the arguments of IDOR in connection with Gas Revenue Act to these PUF tax arguments nor has IDOR

considered the application of the Gas OBF Law and the Electric OBF Law to the PUF Act. Preliminarily, Staff would note that the PUF tax does distinguish between electric utilities and other public utilities and treats such entities quite differently, presumably because of the restructuring of the electric industry. Therefore, it is not clear to Staff whether the General Assembly would be concerned about the continued differentiation created by the OBF programs, particularly in light of the fact that the PUF tax on amounts due under the OBF programs will not be significant.

Staff recognizes that there are costs in collecting and then refunding a tax that did not need to be paid. These costs need to be taken into consideration by the utilities in making their decisions. At the end of the day, all program costs will be evaluated based upon their reasonableness and prudence. In Staff's view, that prudency determination is not to be made in this proceeding but only when the utility seeks recovery under the automatic adjustment clause tariff and the Commission has before it actual expenditures. 220 ILCS 5/16-111.7(f) and 220 ILCS 5/19-140(f). Consequently, Staff does not agree with NS/PGL's request that the Commission find in this proceeding that costs incurred to receive a binding determination of the applicability of the Gas Revenue Tax Act and municipal utility tax are recoverable Program costs.

3. Additional Reply Comments to NS/PGL

Peoples/NS also states that the Commission need not make determinations in this Docket concerning taxes and that such a failure would not jeopardize the OBF program. Staff agrees. Peoples/NS argues, however, that it would be administratively efficient for the Commission to make a determination regarding: (i) the applicability of PUF taxes to OBF program amounts; and (ii) "…the recoverability as Program costs of certain costs that utilities may incur to receive an authoritative decision concerning the GRT or MUT…." Staff disagrees and does not believe that the record is sufficient for either determination. As Staff has stated in its Additional Initial Comments, Staff believes that the time allotted in this Docket is not sufficient to determine the applicability of PUF taxes. In addition, Staff agrees with Peoples/NS that a legislative solution should be sought. As will be discussed below in more detail, Staff also believes it is premature to address the recoverability of costs not yet incurred to receive a binding opinion from IDOR concerning the GRT or opinions from other taxing authorities.

In its Additional Initial Comments, Peoples/NS provides an analysis of the applicability of both the GRT and the MUT to OBF program amounts. As Staff agrees with Peoples/NS that these taxes are not within the jurisdiction of the Commission, Staff will not comment on this analysis. Peoples/NS also determines that PUF taxes apply to the OBF. As this analysis is consistent with Staff's preliminary analysis set forth in Staff's Additional Initial Comments, Staff only notes that Peoples/NS did not address the applicability to the PUF tax of the constitutional arguments raised by the Illinois Department of Revenue ("IDOR") in connection with the GRT. That said, Staff also acknowledges that it was unable to provide this analysis under the timeframes of this Docket and the Companion Dockets. Thus, from Staff's point of view, the PUF tax analysis remains preliminary. Consequently, Staff posits that the parties' concerns regarding the applicability of taxes to OBF Program amounts ought to be brought to the legislature.

Peoples/NS also points out the IDOR memorandum, attached to Staff's Reply Comments filed in this Docket, is non-binding. (Id. at 11). Staff agrees. Peoples/NS raises questions regarding the consistency of this IDOR memorandum with other decisions made by IDOR in contexts that People/NS argues are similar. (Id. at 8-9). As Peoples/NS has correctly pointed out, the Commission has no jurisdiction over these issues. IDOR is not a party to this Docket and so is not available to respond in this forum. While Staff acknowledges that the application of the GRT may impact the OBF programs, neither Staff nor the Commission has any role in resolving these disputed issues.

Peoples/NS states that it "believes a binding opinion from the taxing authority is needed if they are to exclude OBF revenues." (Id. at 8). Staff is not certain what precisely Peoples/NS is requesting. Peoples/NS states that "it would not be prudent for Petitioners to exclude from 'gross receipts' revenue that seems clearly to fit within the definition of 'gross receipts' under the GRT Act." (Id. at 11). Furthermore, Peoples/NS also states that the IDOR memorandum is problematic. Id. Peoples/NS raises issues that even a binding opinion of IDOR may be subject to de novo review, which suggests that a binding opinion would not provide the company with sufficient justification to exclude taxes. (Id. at 8-9). So, while Peoples/NS appears to want a binding opinion from IDOR, it also appears not to trust a binding opinion as determinative.

Staff points out that the responsibility to determine its tax liability remains with the utility. If NS/PGL believe, using their expertise and judgment, that obtaining a binding opinion is a necessary course of action, they should pursue that course of action. If they believe that a binding opinion does not provide sufficient justification to refrain from including the tax, then they should collect the tax. It would not seem appropriate for the Commission to decide this issue for the Company, particularly since the tax is not within the Commission's jurisdiction.

If Peoples/NS is requesting a "prudency review" under Section (f) of the Gas OBF Law, Staff points out that a determination of the reasonableness or prudency of costs, not yet incurred or submitted, is not appropriate at this time. Staff recommends that the Commission decline to "pre-approve" unknown costs in isolation, outside a rate case or reconciliation of a rider. Even if the Company is asking only if these kinds of costs (not yet described in any detail) are "costs of offering a program … including, but not limited to, start-up and administrative costs…" Staff believes a decision on this would be premature because of the unknown costs. That said, Staff would tend to agree that these kinds of costs would likely fall under the category of program, start-up or administrative costs under Section (f) of the Gas On-Bill Financing Law; provided, such costs were reasonable and prudently incurred, and were not otherwise covered in base rates, they would likely be recoverable.

4. Additional Reply Comments to CUB Comments

CUB argues in addition that if a binding opinion is necessary from IDOR, the costs associated with the opinion should be recoverable as program costs. Staff understands CUB to argue that these costs should be passed onto ratepayers generally under Section (f) of the On-Bill Financing Laws. As Staff has stated herein, the

recoverability of these costs is premature and not properly before the Commission in this Docket or the Companion Dockets.

With respect to the PUF tax, CUB believes the ICC has authority to determine if the PUF tax is applicable to OBF loan payments. (Id. at 4). CUB, however, recommends that if the Commission determines that the PUF tax is applicable to the OBF Program, the tax should not be assessed against the individual loan participant (as part of the cost of the measure under Section (c)(1)(B)) but, because of the societal benefit resulting from energy savings, this tax should be recovered as a program cost , in other words, against ratepayers generally (under Section (f) of the laws). Staff disagrees with CUB on this point. Notwithstanding any general societal benefit, Staff believes that the individual loan participant should bear theses taxes since they are assessed on the amounts payable under their individual loan.

E. Commission Analysis and Conclusion

At the outset, we note that this is an expedited proceeding to review the statutorily mandated OBF Program proposed by the utility. No determination of taxes is necessary under the relevant statute, but in the interest of administrative efficiency, we consider the issues raised.

We agree with Staff, and the various parties that filed comments on the tax issue, that the only tax over which the Commission has the jurisdiction to determine applicability, is the Public Utility Fund Tax, pursuant to Section 5/2-202 of the Act. To the extent a utility pursues a decision from another taxing authority on the applicability of another tax, the utility may petition for recovery of any prudently incurred expenses related to that pursuit through the utility's automatic adjustment clause tariff reconciliation proceeding.

Despite the ALJ's ruling requesting further comments on the tax issue, the arguments of the parties are not thoroughly vetted, i.e., ComEd does not respond to Staff's arguments regarding the applicability of taxes to the amounts financed under the OBF Program and Nicor states that it "takes no position on how the Commission should decide whether the PUF tax is applicable." Nicor Reply to Additional Comments at 2. On the arguments actually made, however, we are not persuaded or convinced that the PUF tax is applicable. We turn now to the relevant statutory authority.

The Commission derives its authority for imposing the PUF tax from Section 5/2-202, which states in relevant part that:

> A tax is imposed upon each public utility subject to the provisions of this Act equal to .08% of its gross revenue . . . For purposes of this Section, "gross revenue" shall not include revenue from the production, transmission, distribution, sale delivery, or furnishing of electricity.

220 ILCS 5/2-202(c). Gross revenue is defined in Section 5/3-121, which states:

> As used in Section 2-202 of this Act, the term "gross revenue" includes all revenue which (1) is collected by a public utility subject to regulations under this Act (a) pursuant to the rates, other charges, and classifications which it is required to filed under Section 9-102 of this Act and (b)

> pursuant to emergency rates as permitted by Section 9-104 of this Act, and (2) is derived from the intrastate public utility business of such a utility.

220 ILCS 5/3-121. Public utility business is defined in Section 5/3-105, which states:

> (1) the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water, or light, except when used solely for communications purposes;
>
> (2) the disposal of sewerage; or
>
> (3) the conveyance of oil or gas by pipe line

220 ILCS 5/3-105 (a). In order for the PUF tax to apply to the amounts financed under the OBF or the Program Fees recovered, the two part definition of gross revenue would have to be satisfied.

First, the revenue at issue would have to be revenue collected pursuant to rates filed under Section 9-102 or 9-104. The OBF revenues are collected pursuant to either Section 5/19-140 or Section 5/16-111.7. For that reason alone, the OBF revenues are not subject to PUF. Further, in examining the definition of "gross revenues" under Section 3-121, we observe that it plainly speaks to "revenue which is collected . . . pursuant to the rates, other charges and classifications which it required to file under Section 9-102." 220 ILCS 5/3-121. This phrase, without either being enlarged or diminished, clearly refers to regulated rates and other forms of monetary consideration demanded in exchange for the provision of service. Nothing more is included in Section 3-121, and certainly it does not define "gross revenues" to include all revenues obtained from non-rate-related aspects over which the Commission may have jurisdiction. We have no authority to re-write a statute. It is the rule that a taxing statute is to be strictly construed and its language not extended nor enlarged beyond its clear import. Texaco-Cities Service Pipeline Company v. Sam McGaw, 182 Ill.2d 262, 275, 695 N.E.2d 481, 487 (1998).

To be entirely sure, however, our analysis requires consideration of the second part of the definition, which requires that the revenue be derived from the intrastate public utility business as defined in Section 3-105. We fail to see any connection between any part of the definition of public utility business with the statutory scheme laid out in the OBF laws wherein the utility acts as a conduit for the collection of money financed by an individual to purchase refrigerators, furnaces, etc.

Also, contrary to Staff's suggestion, there is no basis to expand the PUF tax law by construing language in the OBF law. We note that Staff relies on the sentence in the OBF laws which states that the amounts due under the program shall be deemed amounts owed for gas or electric service. When taken in context, as required by the rules of statutory construction, this sentence does not have anything to do with taxes. The entire paragraph from which it is taken states that:

> A loan issued to a participant pursuant to the program shall be the sole responsibility of the participant, and any dispute that may arise concerning the loan's terms, conditions, or charges shall be resolved between the participant and lender. Upon transfer of the property title for the premises

> at which the participant receives electric service from the utility or the participant's request to terminate service at such premises, the participant shall pay in full its electric utility bill, including all amounts due under the program, provided that this obligation may be modified as provided in subsection (g) of this Section. Amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial electric service.

220 ILCS 5/19-140(c)(5). Simply stated, the language in this paragraph speaks to the customer's obligation. It explains, in relevant part, that if a customer were to move from the premises he or she must pay the utility bill in full and that bill includes "all amounts due" under the program. The characterization of these amounts due as "amounts owed" for utility service was clearly meant for purposes having no relationship to taxes. Indeed, the next following paragraph makes this clear where the General Assembly wrote that the utility retains its right to disconnect a participant that defaults on the payment of its utility bill. 220 ILCS 5/19-140(c)(6). At bottom, there is no express provision on taxes to be found in these paragraphs or in the whole of the statute. Thus, Staff's reliance on an isolated sentence, taken out of context, provides no logical basis upon which to impose the PUF tax.

To the extent that Staff believes that there is a further basis upon which to explore the applicability of the PUF tax, it can propose the initiation of a new and separate proceeding.

Staff maintains that the only issue to be decided in this docket, or the related dockets, is that if any taxes were to apply, whether these taxes should be imposed on the individual participant or collected from all ratepayers. In reality, any energy efficiency measure that is purchased by a consumer will presumably be subject to a sales tax. It makes no sense that further taxes should be applied to that purchase. In the event that some other tax is applied, however, it is appropriate that these taxes be recovered from all ratepayers. It would be a great disincentive to a potential participant in this program if they were told that they would be required to pay additional taxes because they chose to finance through their utility bill instead of just outright purchasing the item. This would diminish the purposes, intents, and goals of the OBF statutes.

XI. Findings and Ordering Paragraphs

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) Peoples Gas is an Illinois corporation engaged in the transportation, purchase, storage, distribution and sale of natural gas to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;

(2) North Shore is an Illinois corporation engaged in the transportation, purchase, storage, distribution and sale of natural gas to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;

(3) the Commission has jurisdiction over the parties and the subject matter herein;

(4) the findings of fact and conclusions of law set forth in the prefatory portions of this Order are supported by the record herein and are hereby adopted as findings of fact and conclusions of law;

(5) the On Bill Financing Program proposed by North Shore Gas Company and The Peoples Gas Light and Coke Company as modified herein should be approved;

(6) the tariff proposed by North Shore Gas Company and The Peoples Gas Light and Coke Company, Rider OBF, should be approved;

(7) Staff should reconvene the workshops after the completion of the FI RFP process;

(8) North Shore Gas Company and The Peoples Gas Light and Coke Company should file sample loan documents, the interest rate and the list of eligible measures prior to the initiation of the Program;

(9) North Shore Gas Company and The Peoples Gas Light and Coke Company should provide to Staff, for review and approval, the proposed consumer information that will be made available to potential participants;

(10) the Independent Evaluator should convene workshops to receive feedback from all interested stakeholders;

(11) any motions, objections or petitions in this proceeding that have not specifically been ruled on should be disposed of in a manner consistent with the findings and conclusions herein.

IT IS THEREFORE ORDERED that the On Bill Financing Program proposed by North Shore Gas Company and The Peoples Gas Light and Coke Company, as modified herein, is approved.

IT IS FURTHER ORDERED that the proposed tariff, Rider OBF, as proposed by North Shore Gas Company and The Peoples Gas Light and Coke Company, is approved.

IT IS FURTHER ORDERED that Staff of the Commission is directed to reconvene the workshops following completion of the FI RFP process.

IT IS FURTHER ORDERED that following completion of the RFP process, North Shore Gas Company and The Peoples Gas Light and Coke Company are directed to file the agreed to sample loan documents, the interest rate and its list of eligible measures prior to initiation of the OBF Program.

IT IS FURTHER ORDERED that prior to initiation of the OBF Program, North Shore Gas Company and The Peoples Gas Light and Coke Company are directed to provide to Staff, for review and approval, the proposed consumer information that will be made available to potential participants.

IT IS FURTHER ORDERED that workshops should be convened by the Independent Evaluator during the evaluation process in order to receive feedback from all interested stakeholders.

IT IS FURTHER ORDERED that any motions, objections or petitions in this proceeding that have not been specifically ruled on are disposed of in a manner consistent with the findings and conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:	April 16, 2010
BRIEFS ON EXCEPTIONS DUE:	April 28, 2010
REPLY BRIEFS ON EXCEPTIONS DUE:	May 3, 2010

Leslie Haynes,
Administrative Law Judge